

Sale Agreement &
Assignment of Lease

**NEW YORK CITY
INDUSTRIAL DEVELOPMENT AGENCY**

AND

123 WASHINGTON LLC

**INSTALLMENT SALE AGREEMENT
AND ASSIGNMENT OF LEASE**

Dated as of October 1, 2007

New York City Industrial Development Agency
Variable Rate Demand Liberty Revenue Bonds, Series 2007
(123 Washington LLC Project)

Record and Return to:
Hawkins Delafield & Wood LLP
1 Chase Manhattan Plaza
New York, New York 10005
Attention: Arthur M. Cohen, Esq.

Address
123 Washington Street
New York, New York

TABLE OF CONTENTS

Page

ARTICLE I Definitions and Representations

Section 1.1.	Definitions	5
Section 1.2.	Construction	5
Section 1.3.	Representations and Warranties by Agency	5
Section 1.4.	Findings by Agency	5
Section 1.5.	Representations, Warranties and Covenants of the Company	6

ARTICLE II The Project

Section 2.1.	The Project	11
Section 2.2.	Completion by Company	12
Section 2.3.	Issuance of Series 2007 Bonds	12
Section 2.4.	Title Insurance	12

ARTICLE III Sale of Interest in Facility, Installment Purchase Payments and Related Provisions

Section 3.1.	Lease and Sale of the Facility	13
Section 3.2.	Duration of Term	13
Section 3.3.	Payment Provisions; Pledge of Agreement and Installment Purchase Payments	13
Section 3.4.	Obligation of Company Unconditional	15
Section 3.5.	Payment for Tendered Series 2007 Bonds	16
Section 3.6.	Mortgages	18
Section 3.7.	Continuing Disclosure	18

ARTICLE IV Maintenance, Taxes Payments in Lieu of Taxes and Insurance

Section 4.1.	Maintenance, Alterations and Improvements	19
Section 4.2.	[Reserved]	20
Section 4.3.	No Exemption Based Upon Agency's Interest	20
Section 4.4.	Taxes, Assessments and Charges	20
Section 4.5.	Insurance	20
Section 4.6.	Advances by Agency, Trustee or Credit Provider Agent	24
Section 4.7.	Compliance with Legal Requirements	24

ARTICLE V Damage, Destruction and Condemnation

Section 5.1.	Damage, Destruction and Condemnation	26
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ARTICLE VI
Particular Covenants

Section 6.1.	Dissolution or Merger; Restriction on Company	29
Section 6.2.	Indemnity	30
Section 6.3.	Compensation and Expenses of Trustee, Bond Registrar, Tender Agent, Remarketing Agent, Paying Agents, Auction Agent, Broker-Dealer, Credit Provider, Liquidity Provider and Agency	34
Section 6.4.	Retention of Interest in Facility; Grant of Easements.....	34
Section 6.5.	Company's Covenant as to Tax Exemption.....	35
Section 6.6.	Financial Statements; No-Default Certificates.....	36
Section 6.7.	Discharge of Liens.....	37
Section 6.8.	Agency's Authority.....	37
Section 6.9.	No Warranty of Condition or Suitability	37
Section 6.10.	Amounts Remaining in Funds.....	38
Section 6.11.	Issuance of Additional Bonds.....	38
Section 6.12.	Employment Information, Opportunities and Guidelines.....	39
Section 6.13.	Redemption Under Certain Circumstances; Special Covenants	40
Section 6.14.	Further Assurances	41
Section 6.15.	Recording and Filing	41
Section 6.16.	Right to Cure Agency Defaults	44
Section 6.17.	Obligations under and Covenants with Respect to the Condominium Documents.....	44
Section 6.18.	Certain Income and Expense Statements	44
Section 6.19.	Signage at Facility Site	45
Section 6.20.	Covenant to Notify Agency Upon Death of Joseph Moinian	45
Section 6.21.	Certain Continuing Representations	45
Section 6.22.	Notification as to Changes in Ownership	45
Section 6.23.	Recognized Mezzanine Lenders; Recognized Mortgage Lenders	45
Section 6.24.	Consents of Credit Provider Agent.....	46
Section 6.25.	Cure by Recognized Mezzanine Lenders, Recognized Mortgage Lenders or the Credit Provider Agent	47

ARTICLE VII
Events of Default; Remedies

Section 7.1.	Events of Default	48
Section 7.2.	Remedies on Default.....	49
Section 7.3.	Remedies Cumulative	50
Section 7.4.	No Additional Waiver Implied by One Waiver	50
Section 7.5.	Effect on Discontinuance of Proceedings	51
Section 7.6.	Agreement to Pay Attorneys' Fees and Expenses	51
Section 7.7.	Rights of Credit Provider Agent.....	51

ARTICLE VIII
Options

Section 8.1.	Options	52
Section 8.2.	Termination on Exercise of Option to Terminate.....	53
Section 8.3.	Option to Purchase or Invite Tenders of Bonds	54
Section 8.4.	Termination of Agreement.....	54

ARTICLE IX
Miscellaneous

Section 9.1.	Indenture; Amendment	55
Section 9.2.	Force Majeure.....	55
Section 9.3.	Assignment and Sublease.....	55
Section 9.4.	Priority of Indenture.....	57
Section 9.5.	Benefit of and Enforcement by Credit Provider Agent and Bondholders	57
Section 9.6.	Amendments.....	57
Section 9.7.	Notices	57
Section 9.8.	Prior Agreements Superseded	61
Section 9.9.	Severability.....	61
Section 9.10.	Inspection of Facility	61
Section 9.11.	Effective Date; Counterparts	62
Section 9.12.	Binding Effect	62
Section 9.13.	Net Agreement.....	62
Section 9.14.	Law Governing.....	62
Section 9.15.	Investment of Funds.....	62
Section 9.16.	Investment Tax Credit.....	62
Section 9.17.	Waiver of Trial by Jury.....	62
Section 9.18.	Non-Discrimination	63
Section 9.19.	No Recourse under This Agreement or on Bonds Against Individuals.....	63
Section 9.20.	Conflict with Credit Provider Documents	64
Section 9.21.	Date of Agreement for Reference Purposes Only	64

APPENDICES

EXHIBIT A-Definitions	
DESCRIPTION OF FACILITY	
DESCRIPTION OF EXCLUDED PREMISES	
COMPANY OWNERSHIP STRUCTURE	
SCHEDULE A -	Project Completion Certificate
SCHEDULE B -	Employment and Benefits Report
SCHEDULE C -	Subtenant Survey
SCHEDULE D -	Location and Contact Information
SCHEDULE E-	Exception to Representation Section 1.5(bb)
SCHEDULE F-	Form of Required Disclosure Statement
SCHEDULE G-	Recognized Mezzanine Leaders
SCHEDULE H-	Recognized Mortgage Lenders

INSTALLMENT SALE AGREEMENT AND ASSIGNMENT OF LEASE

THIS INSTALLMENT SALE AGREEMENT AND ASSIGNMENT OF LEASE, made and entered into as of October 1, 2007 (this "Agreement"), by and between **NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the "Agency"), having its principal office at 110 William Street, New York, New York 10038, party of the first part, and **123 WASHINGTON LLC**, a limited liability company organized and existing under and by virtue of the laws of the State of Delaware (the "Company"), having its principal office at c/o The Moinian Group, 530 Fifth Avenue, Suite 1800, New York, New York 10036, party of the second part (capitalized terms not otherwise defined in the recitals herein shall have the meaning ascribed to them in Section 1.1 herein):

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act"), has been heretofore enacted by the Legislature of the State of New York for the purposes, among others, of providing for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York, to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, the Agency has been heretofore established under said Enabling Act pursuant to Chapter 1082 of the 1974 Laws of New York, as amended (which Chapter 1082 of the 1974 Laws of New York, as amended, and the Enabling Act are herein collectively called the "Act"), and is authorized to acquire real property and interests therein, buildings and other improvements thereon and machinery and equipment in connection therewith for the purposes set forth above, and to sell the same as herein more particularly described; and

WHEREAS, the Agency is further authorized by the Act to issue its special obligation bonds payable solely from and secured by the revenues derived from the leasing or sale of the land, buildings and other improvements and the machinery and equipment so acquired; and

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Company in order that the Agency may assist in financing with the proceeds of a Liberty Bond issue of the construction of an approximately 132,000 square foot 217-key luxury hotel as a commercial project (the "Facility"), to constitute a portion of a separate condominium unit upon completion, and to be located at 123 Washington Street, Manhattan, New York as part of an approximately 400,000 square foot mixed-use hotel, retail and residential condominium development (the "Development"); and

WHEREAS, the Company has advised the Agency that conventional financing, as the sole source of financing hotel construction, together with the high expenses to operate a

hotel in The City of New York (the "City"), would make financing of the Project solely with conventional financing not economically viable; that Lower Manhattan is the fourth largest Commercial Business District in the country, with more than 90 million square feet of office space; that tourism has increased dramatically over the last few years, which number is expected to increase even more dramatically as development of the World Trade Center Memorial and Freedom Tower progress; that despite the large number of commercial firms and tourists in Lower Manhattan, as well as the continued increase in residential units coming on-line, there remains a significant shortage of available hotel rooms; that Lower Manhattan desperately needs additional hotel rooms; that Liberty Bonds are an essential component of the Company's ability to construct the Project at the site and it would not be economically feasible for the Company to undertake the Project without the financial assistance of the Agency; and that the favorable financing afforded by Liberty Bonds issued by the Agency is key to carrying the Project on an operating basis until the future development of the downtown Manhattan area comes to market and stabilizes; and

WHEREAS, on July 11, 2006 the Agency adopted a preliminary resolution to the effect that the Project would, if approved by the Agency in accordance with the Act, promote and be authorized by, and be in furtherance of the policy of the State as set forth in the Act; and

WHEREAS, it is provided in the Act that the Agency shall not provide financial assistance in respect of any project where facilities or property that are primarily used in making retail sales of services or goods to customers who personally visit such facilities constitute more than one-third of the total project cost except, among other exceptions, if (y) the predominant purpose of the project is to make available goods or services which would not, but for the project, be reasonably accessible to the residents of the municipality within which the proposed project would be located because of a lack of reasonably accessible retail trade facilities offering such goods or services, and (z) prior to providing financial assistance to the project, the chief executive officer of the municipality for whose benefit the agency was created shall confirm the proposed action of the agency; and

WHEREAS, the Agency retained PricewaterhouseCoopers (the "Consultant") to survey and to analyze the existing and anticipated market for hotel services in Lower Manhattan (the "Report") and the Consultant concluded in the Report dated January 8, 2007 that the Lower Manhattan market for hotel facilities is currently underserved and not reasonably accessible to the residents (commercial or domicile) of Lower Manhattan; and

WHEREAS, the Agency adopted an inducement resolution on January 9, 2007 authorizing the Project, and determining, among other things, in reliance in part upon the Report, that the predominant purpose of the Project is to make available services which would not, but for the Project, be reasonably accessible to the residents of the City because of a lack of reasonably accessible retail trade facilities offering such services; and

WHEREAS, in accordance with the requirements of Section 862(2)(c) of the Act, the Mayor of the City has confirmed the proposed action to be taken by the Agency in connection with the Project pursuant to a Confirmation dated October 5, 2007; and

WHEREAS, the Agency has determined that the financing of a portion of the costs of the Project will assist the Company in reducing its costs and thereby induce the Company to proceed with the Project; and

WHEREAS, as a result of such negotiations, the Company has requested the Agency to issue its bonds in the aggregate principal amount of \$50,000,000 to effect such financing; and

WHEREAS, concurrently with the execution hereof, the Company will lease the Facility to the Agency pursuant to a Lease Agreement, dated as of even date herewith, and the Agency will sell and assign its leasehold interest under the IDA Lease in the Facility to the Company pursuant to this Agreement; and

WHEREAS, to provide funds for a portion of the costs of the Project and for incidental and related costs and to provide funds to pay the costs and expenses of the issuance of the Series 2007 Bonds hereinafter mentioned, the Agency has authorized the issuance of its Variable Rate Demand Liberty Revenue Bonds, Series 2007 (123 Washington LLC Project) in the aggregate principal amount of \$50,000,000 (the "Series 2007 Bonds") pursuant to the Act, the Bond Resolution, a certificate of determination of an Authorized Representative of the Agency, and an Indenture of Trust dated as of even date herewith (as the same may be amended or supplemented, the "Indenture"), between the Agency and U.S. Bank National Association, as Trustee (the "Trustee"); and

WHEREAS, concurrently with the execution hereof and in order to further secure the Series 2007 Bonds, the Company will enter into the Guaranty Agreement, dated as of even date herewith, with the Trustee guaranteeing, among other things, the payment of the principal of, redemption premium, if any, Purchase Price, if any, and interest on the Series 2007 Bonds; and

WHEREAS, the construction of the Development is being financed from the proceeds of the Series 2007 Bonds (but only as to a portion of the costs of the Facility) and (i) a \$240,000,000 construction loan (the budget for which \$240,000,000 construction loan is inclusive of the \$50,000,000 principal amount of the Series 2007 Bonds) being provided by PB Capital Corporation, a Delaware corporation, acting as agent for itself and certain other institutional lenders (together with any replacement or successor, the "Development Lenders Agent") pursuant to a certain Senior Loan Agreement, a certain Building Loan Agreement (the "Building Loan Agreement") and a certain Project Loan Agreement, each dated and effective as of March 8, 2007, as amended, and each among the Company as borrower, the Development Lenders Agent and the lenders that are signatories thereto, or their successors and assigns, (ii) a \$40,000,000 first mezzanine loan (the "First Mezzanine Loan") being provided to 123 Washington Member LLC, a Delaware limited liability company (the "First Mezzanine Borrower") (the Company's sole member) and (iii) a \$25,000,000 second mezzanine loan (the "Second Mezzanine Loan") being provided to 123 Washington Member II LLC, a Delaware limited liability company (the "Second Mezzanine Borrower") (the First Mezzanine Borrower's sole member); and

WHEREAS, as security for the construction loan described above, the Company has granted, among other things, first, second and third priority mortgages on the entirety of the

Development (including the Facility) to the Development Lenders Agent pursuant to certain of the Development Security Documents; and

WHEREAS, the ownership interests in the Company have been pledged by the First Mezzanine Borrower as security for the First Mezzanine Loan, and the ownership interests in the First Mezzanine Borrower have been pledged by the Second Mezzanine Borrower as security for the Second Mezzanine Loan; and

WHEREAS, the Development Lenders Agent has arranged for the issuance by Landesbank Baden-Wurttemberg acting through its New York Branch, of an irrevocable direct pay letter of credit in favor the Trustee for the benefit of the Holders of the Series 2007 Bonds to secure the payment of the principal or Purchase Price of, and up to thirty-four (34) days' interest (at the maximum interest rate of fifteen percent (15%) per annum) on, the Series 2007 Bonds; and

WHEREAS, the Company and Starwood Hotels & Resorts Worldwide, Inc., a Maryland corporation ("Starwood"), have entered into a certain W New York-Downtown Operating Agreement and a certain W New York-Downtown Technical Services Agreement, each dated as of March 8, 2007, pursuant to which Starwood has agreed to operate and manage the Facility; and

WHEREAS,

(i) the First Mezzanine Borrower is the sole member of the Company;

(ii) the Second Mezzanine Borrower is the sole member of the First Mezzanine Borrower;

(iii) 123 Washington Holding LLC, a Delaware limited liability company (the "Holding Company") is the sole member of the Second Mezzanine Borrower; and

(iv) Joseph Moinian (the "Indemnitor") is the more than 98% owner of the Holding Company; and

WHEREAS, the Indemnitor has entered into a certain Indemnity Guaranty Agreement with the Agency dated as of even date herewith pursuant to which the Indemnitor has guaranteed certain indemnity obligations of the Company under the Installment Sale Agreement for the benefit of the Agency;

NOW, THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows (provided that in the performance of the agreements of the Agency herein contained, any obligation it may incur for the payment of money shall not subject the Agency to any pecuniary or other liability nor create a debt of the State of New York or of the City, and neither the State of New York nor the City shall be liable on any obligation so incurred, but any such obligation shall be payable solely out of the installment purchase payments, revenues and receipts derived from or in connection with the Facility, including moneys received under this Agreement):

ARTICLE I

Definitions and Representations

Section 1.1. Definitions. Terms not otherwise defined herein shall have the same meanings as used in the Indenture or in the Tax Regulatory Agreement or in Exhibit A, as applicable, attached hereto and made a part hereof.

Section 1.2. Construction. In this Agreement, unless the context otherwise requires:

(a) The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the Closing Date.

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships), limited liability companies, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

Section 1.3. Representations and Warranties by Agency. The Agency makes the following representations and warranties:

(a) The Agency is a corporate governmental agency constituting a body corporate and politic and a public benefit corporation duly organized and existing under the laws of the State, and is authorized and empowered to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action of its members, the Agency has duly authorized the execution and delivery of this Agreement and each other Project Document to which it is a party.

(b) In order to finance and refinance a portion of the cost of the Project, the Agency proposes to issue the Series 2007 Bonds. The Series 2007 Bonds will mature, bear interest, be redeemable and have the other terms and provisions set forth in the Indenture.

Section 1.4. Findings by Agency. The Agency, based upon the representations and warranties of the Company contained in this Agreement and the information contained in the application and other materials heretofore submitted by or on behalf of the Company to the Agency, hereby finds and determines that the financing of a portion of the costs of the Project by the Agency and the sale of the Agency’s leasehold interest in the Facility under the IDA Lease to the Company (x) is reasonably necessary to induce the Company to proceed with the Project,

(y) will promote and is authorized by and will be in furtherance of the policy of the State as set forth in the Act, and (z) is in furtherance of the Agency's policies for the promotion, encouragement and development of economically sound industry for the purpose of preventing unemployment and economic deterioration.

The Agency further confirms its findings that:

(a) the Project shall not result in the removal of any facility or plant of the Company or any other occupant or user of the Facility from outside of the City (but within the State) to within the City or in the abandonment of one or more facilities or plants of the Company or any other occupant or user of the Facility located within the State but outside of the City;

(b) no funds of the Agency shall be used in connection with the Project for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promotional materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given in connection with the Project to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State;

(c) the Project is in furtherance of the Agency's Liberty Bond Program principles in that the Project will create hotel capacity in a Lower Manhattan market that is already underserved, the Project will generate new jobs for the City and will provide convenient accommodations for business travelers and tourists thereby making Lower Manhattan more competitive with other locations in the region and more attractive to businesses contemplating relocating to the neighborhood, and the Project will encourage environmentally responsible design and construction; and

(d) in reliance in part upon the Report, the predominant purpose of the Project is to make available services which would not, but for the Project, be reasonably accessible to the residents of the City because of a lack of reasonably accessible retail trade facilities offering such services.

The Agency further warrants that the Mayor of the City has (y) confirmed the actions of the Agency with respect to the Project as required pursuant to the Act, and (z) designated the issuance of \$50,000,000 of Liberty Bonds for the Project under the Code, and that neither such confirmation nor designation has been amended, withdrawn or rescinded.

Section 1.5. Representations, Warranties and Covenants of the Company.

The Company makes the following representations, warranties and covenants:

(a) The Company:

(i) is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and is in good standing and qualified to do business under the laws of the State;

(ii) has all requisite legal right, power and authority and all necessary licenses and permits to own, lease, mortgage and operate the Facility and to carry on its business as now conducted and as presently proposed to be conducted; and

(iii) is duly qualified and is authorized to do business and is and shall continue to be in good standing in each jurisdiction where the character of the Facility or the nature of its activities makes such qualification necessary, including the State.

(b) The execution, delivery and performance of this Agreement and each other Project Document to which the Company is a party and the consummation of the transactions herein and therein contemplated have been duly authorized by all requisite action on the part of the Company and will not violate any provision of law, any order of any court or agency of government, or the articles of organization or operating agreement of the Company, or any indenture, agreement or other instrument to which the Company is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

(c) The assistance of the Agency in the financing of a portion of the costs of the Project is reasonably necessary to induce the Company to proceed with the Project.

(d) The Project will not result in the removal of a plant or facility of the Company or any other occupant or user of the Facility from one area of the State to another area of the State or the abandonment of facilities of the Company or any other occupant or uses of the Facility within the State but outside of the City.

(e) The total cost of the Project being funded with the Series 2007 Bonds is at least \$50,000,000, which represents only a portion of the total cost of the entire Project to the Company.

(f) Expenses for supervision by the officers, members, employees or agents of the Company, and expenses for work done by such officers, members, employees or agents in connection with the Project, will be included as a Project Cost only to the extent that such Persons were specifically employed for such particular purpose, that such persons are paid competitive salaries or wages for the work performed, the expenses do not exceed the actual cost thereof, and are to be treated on the books of the Company as a capital expenditure in conformity with generally accepted accounting principles applied on a consistent basis.

(g) Any costs incurred with respect to that part of the Project paid from the proceeds of the sale of the Series 2007 Bonds shall be treated on the books of the Company as capital expenditures in conformity with generally accepted accounting principles applied on a consistent basis.

(h) The property included in the Facility is either property of the character subject to the allowance for depreciation under Section 167 of the Code, or land.

(i) No part of the proceeds of the Series 2007 Bonds will be used to finance inventory or will be used for working capital.

(j) The Project is included within the definition of “project” under the Act.

(k) All consents, approvals or authorizations, if any, of any governmental authority required on the part of the Company (x) in connection with the execution and delivery of this Agreement and each other Project Document to which the Company shall be a party, or (y) in connection with the leasing of the Facility by the Company to the Agency concurrently with the issuance and delivery of the Series 2007 Bonds, have been duly obtained.

(l) This Agreement and the other Project Documents to which the Company is a party constitute the legal, valid and binding obligations of the Company enforceable against it in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, moratorium or insolvency or other laws affecting creditors’ rights generally and is subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(m) The Project has been designed, and the operation of the Facility will be, in compliance with all applicable Legal Requirements.

(n) There is no action or proceeding pending or to the best knowledge of the Company threatened by or against the Company by or before any court or administrative agency that might adversely affect the ability of the Company to perform its obligations under this Agreement and each other Project Document to which the Company shall be a party, and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Company as of the Closing Date in connection with the execution and delivery of this Agreement and each other Project Document to which the Company shall be a party or in connection with the performance of the obligations of the Company hereunder and under each of the Project Documents have been obtained.

(o) The Company intends to operate the Facility or cause the Facility to be operated (i) in accordance with this Agreement, and (ii) as a qualified “project” in accordance with and as defined under the Act.

(p) There is no existing violation against the Facility filed by any court or administrative agency that may prohibit the ability of the Company to use or operate the Facility for its intended purposes or for which the Company has not otherwise agreed or made arrangements to have removed and satisfied of record.

(q) Pursuant to the IDA Lease, the Company has vested the Agency with a valid leasehold estate in the Facility.

(r) The Facility will aggregate approximately 132,000 square feet and contain 217 key units as a luxury hotel.

(s) None of the Company, any member of the Company, any of the Principals of the members of the Company or any of the Principals of the Company are Prohibited Persons.

(t) To the best knowledge of the Company after due and diligent inquiry, no default exists under any of the Development Security Documents or under any of the Hotel Operating Agreements.

(u) No portion of the proceeds of the Series 2007 Bonds will be used to finance or refinance any cost other than Project Costs.

(v) The representations set forth in the Tax Regulatory Agreement executed by the Company are true and correct as of the date of such Tax Regulatory Agreement and are incorporated by reference into this Agreement as if fully set forth herein.

(w) The Fiscal Year of the Company ends on December 31.

(x) No Bond proceeds will be disbursed to finance costs incurred by the Company in connection with the construction and/or improvement of retail, restaurant or residential space in the Development, or any other space than that to be constructed as a luxury hotel.

(y) The Indemnitor is the indirect Principal of the Company.

(z) No portion of the Facility shall be used for any residential or housing purposes, or for any restaurant, bar or like retail or commercial use.

(aa) The ownership of the Company as shown on the "Company Ownership Structure" in the appendices attached to this Agreement is accurate and complete.

(bb) Except as set forth in Schedule E attached hereto, none of the Company, the Principals of the Company, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with the Company:

(i) is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the City, unless such default or breach has been waived in writing by the Agency or the City, as the case may be;

(ii) has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;

(iii) has been convicted of a felony in the past ten (10) years;

(iv) has received formal notice from a federal, state or local governmental agency or body that it is currently under investigation for a felony criminal offense; or

(v) has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum.

(cc) No portion of the proceeds of the Bonds will be expended with respect to the Excluded Premises.

(dd) To the best knowledge of the Company, the names and notice addresses for every Mezzanine Lender with respect to each Mezzanine Financing in effect as of the Closing Date are correctly set forth in Schedule G attached hereto. Each such Mezzanine

Financing was entered into in a good-faith arms-length transaction with the related Mezzanine Lender.

(ee) To the best knowledge of the Company, the names and notice addresses for every Mortgage Lender with respect to each Mortgage Financing in effect as of the Closing Date are correctly set forth in Schedule H attached hereto. Each such Mortgage Financing was entered into in a good-faith arms-length transaction with the related Mortgage Lender.

(ff) Neither the Series 2007 Bonds, nor the obligations of the Company under any of the Security Documents, are secured by any lien on or security interest in the Facility or any other asset of the Company.

(gg) The Company (i) neither owns nor hires any automobiles, forklifts or other drivable machinery and/or vehicles used in connection with the Facility and (ii) has no intention of owning or hiring any such vehicle in connection with the Facility for the period commencing the Closing Date and ending on the Project Completion Date.

ARTICLE II

The Project

Section 2.1. The Project. (a) Pursuant to the IDA Lease, the Company has vested the Agency with a valid leasehold estate in the Facility free and clear of all liens, claims, charges, encumbrances, security interests and servitudes other than Permitted Encumbrances.

(b) As promptly as practicable after receipt of the proceeds of sale of the Series 2007 Bonds and out of said proceeds of sale, the Company will proceed to complete the Project. A portion of the cost of the Project shall be paid from the Project Fund established under the Indenture or as otherwise provided in Section 2.2 hereof. The Company shall have the right to designate all contractors, materialmen, vendors, suppliers and other companies, firms or Persons furnishing labor, services or materials for or in connection with the Project.

(c) In order to accomplish the purposes of the Agency, and to assure the effectuation of the Project in conformity with the requirements of the Company, the Company has undertaken to proceed with the design of the Project, the preparation of the Facility site and the completion of the Project work.

(d) The Company shall pay (i) all of the costs and expenses in connection with the preparation of any instruments of conveyance and transfer of a leasehold interest in the Facility to the Agency, the delivery of any instruments and documents and their filing and recording, if required, (ii) all taxes and charges payable, if any, in connection with such conveyance and transfer, or attributable to periods prior to such conveyance and transfer, to the Agency, and (iii) all shipping and delivery charges and other expenses or claims incurred in connection with the Project.

(e) The Company covenants that it will obtain or cause to be obtained all necessary approvals from any and all governmental agencies with respect to the Project, all of which have been or will be done in compliance with all applicable Legal Requirements, and with the conditions and requirements of all policies of insurance with respect to the Facility required to be maintained under the Condominium Documents (when executed) and this Agreement. Upon completion of the Project, the Company will promptly obtain or cause to be obtained all required occupancy and operation permits, authorizations and licenses from appropriate authorities, if any be required, authorizing the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement and shall furnish copies of same to the Agency, the Credit Provider Agent and the Trustee within ten (10) Business Days of receipt thereof.

(f) The Company shall take such action and institute such proceedings as shall be necessary to cause and require all contractors and material suppliers to complete their contracts diligently in accordance with the terms of said contracts, including, without limitation, the correcting of any defective work, with all expenses incurred by the Company or the Agency in connection with the performance of their obligations under this Section to be considered a Project Cost. Any amounts recovered by the Company by way of damages, refunds, adjustments or otherwise in connection with the effectuation of the Project and the expenditure of proceeds of the Bonds for Project Costs, after deduction of expenses incurred in such recovery, if recovered prior to the Project Completion Date, shall be deposited into the Project Fund and made available

for payment of Project Costs, or if recovered after the Project Completion Date, be paid to or at the direction of the Company.

Section 2.2. Completion by Company. The Company unconditionally covenants and agrees that it will complete the Project, or cause the Project to be completed, by September 1, 2010, and that such completion will be effected in a first-class workmanlike manner, using high-grade materials, free of defects in materials or workmanship (including latent defects), as applicable, and in accordance with this Agreement, the Indenture and the other Project Documents. In the event that moneys in the Project Fund are not sufficient to pay the costs necessary to complete the Project in full, the Company shall pay that portion of such costs of the Project as may be in excess of the moneys therefor in said Project Fund and shall not be entitled to any reimbursement therefor from the Agency, the Trustee, the Credit Provider, the Liquidity Provider or the Holders of any of the Bonds (except from the proceeds of Additional Bonds which may be issued for that purpose), nor shall the Company be entitled to any diminution of the installment purchase payments payable or other payments to be made under this Agreement or under any other Security Document.

Upon completion of the Project, the Company shall deliver to the Agency and the Trustee a certificate of an Authorized Representative of the Company substantially in the form set forth in Schedule A attached hereto, together with all attachments required therein.

Section 2.3. Issuance of Series 2007 Bonds. On the Closing Date, the Agency will sell and deliver the Series 2007 Bonds under and pursuant to a resolution adopted by the Agency on March 13, 2007 authorizing the issuance of the Series 2007 Bonds, and under and pursuant to the Indenture. The proceeds of sale of the Series 2007 Bonds shall be deposited in the Project Fund and applied to the payment of Project Costs in accordance with the provisions of the Indenture; provided, however, that except for the requisition submitted by the Company to the Trustee on the Closing Date, the Company shall not submit any requisition to the Trustee for payments from the Project Fund later than ten (10) Business Days prior to the date the Company shall have first submitted such requisition to the Trustee and the Credit Provider Agent. Pending such application, amounts in the Project Fund shall be invested as provided in the Indenture.

Section 2.4. Title Insurance. On the Closing Date, the Company will obtain leasehold title insurance in an amount equal to \$500,000 insuring the Agency's leasehold interest in the Facility pursuant to the IDA Lease against loss as a result of defects in the leasehold interest of the Agency and a survey of the site of the Facility certified to the Agency and dated not prior to nine (9) months before the Closing Date. The title insurance policy shall be subject only to Permitted Encumbrances and shall provide for, among other things, the following: (1) full coverage against mechanics' liens; (2) no exceptions other than those approved by the Agency; (3) an undertaking by the title insurer to provide the notice of title continuation or endorsement; and (4) such other matters as the Agency shall request. Any proceeds of such leasehold title insurance shall be paid to the Trustee for deposit in a special account and applied to remedy the defect in title (including, but not limited to, the reimbursement to the Company for any costs incurred by the Company in remedying such defect in title). If not so capable of being applied or if any amounts remain, the amounts so deposited in a special account shall be transferred to the Installment Purchase Payments Fund and used to reimburse the Credit Provider Agent in connection with a draw on the Credit Enhancement to redeem an equivalent principal amount of the Bonds to the nearest \$5,000 integral multiple of Authorized Denomination.

ARTICLE III

Sale of Interest in Facility, Installment Purchase Payments and Related Provisions

Section 3.1. Lease and Sale of the Facility. (a) Pursuant to the IDA Lease, the Company has leased the Facility to the Agency. The Agency hereby assigns, conveys, sells and transfers to the Company the Project Development Rights together with the entirety of the Agency's leasehold interest in the Facility under the IDA Lease, all for and during the term herein provided and upon and subject to the terms and conditions herein set forth. The foregoing assignment, conveyance, sale and transfer shall not impair the Agency's Reserved Rights.

(b) The Company shall at all times during the term of this Agreement occupy, use and operate the Facility, or cause the Facility to be occupied, used and operated, as a commercial facility and a "project" within the meaning of the Act and for the general purposes specified in the recitals to this Agreement. The Company shall not occupy, use or operate the Facility or allow the Facility or any part thereof to be occupied, used or operated for any unlawful purpose or in violation of any certificate of occupancy affecting the Facility or which may constitute a nuisance, public or private, or make void or voidable any insurance then in force with respect thereto. The Company shall not permit any portion of the Facility to be used for any residential or housing purposes.

(c) It is the intention of the Agency and the Company under this Agreement that the assignment, conveyance, sale and transfer hereunder to the Company by the Agency of the entirety of the Agency's leasehold interest in the Facility (as the same has been demised to the Agency under the IDA Lease) and of the IDA Lease, shall not result in a merger of the leasehold estates and interests of the Company and the Agency under the IDA Lease so as to effect a termination or any other impairment of the IDA Lease; and that (i) the IDA Lease shall be neither terminated nor impaired as a result of the foregoing assignment, conveyance, sale and transfer to the Company; and (ii) the IDA Lease shall continue in full force and effect, and the leasehold interest demised thereunder shall remain an estate vested in the Company until the IDA Lease expires or sooner terminates in accordance with its terms.

Section 3.2. Duration of Term. The term of this Agreement shall commence on the Closing Date and expire on the earlier of (i) 11:59 p.m. (New York City time) on October 1, 2042, or (ii) such date as this Agreement may be terminated as hereinafter provided. The Agency hereby delivers to the Company, and the Company hereby accepts, sole and exclusive possession of the Facility as the Agency has received under the IDA Lease.

Section 3.3. Payment Provisions; Pledge of Agreement and Installment Purchase Payments. (a) The Company covenants to make or cause to be made installment purchase payments, for and with respect to the sale by the Agency to the Company of the Agency's leasehold interest under the IDA Lease and assignment of the IDA Lease to the Company (all as assigned, sold, conveyed and transferred pursuant to Section 3.1 of this Agreement), which the Agency agrees shall be paid (subject to Section 3.3(b) hereof) in immediately available funds by the Company directly to the Trustee for deposit in the Installment Purchase Payments Fund:

(i) on each Interest Payment Date (and each other date on which interest is due and payable on the Bonds, including each date on which the Bonds are

subject to redemption), in an amount equal to the interest due and payable on the Bonds on such Interest Payment Date or other date,

(ii) on each Principal Payment Date or other date on which principal is due and payable on the Bonds (whether at maturity or by acceleration, but not by redemption), in an amount equal to the principal amount of the Bonds then due on such date,

(iii) on each Sinking Fund Installment payment date with respect to the Bonds, in an amount equal to the Sinking Fund Installment, and

(iv) on each Redemption Date or other date on which principal is due on the Bonds which arises by reason of the redemption of Bonds, in an amount equal to the Redemption Price of such Bonds which is due and payable on such Redemption Date.

(b) As security for the performance of its installment purchase payment obligations with respect to the Series 2007 Bonds, and not in limitation of its obligations under Section 3.3(a) hereof, the Company shall arrange for the delivery of the Credit Enhancement to the Trustee on the Closing Date. In order to satisfy its obligations under Section 3.3(a) above, the Company hereby authorizes and directs the Trustee to draw moneys under the Credit Enhancement in accordance with the provisions of the Indenture to the extent and at the times necessary to pay the principal or Redemption Price of, Sinking Fund Installments for, and interest on the Series 2007 Bonds when due (whether at maturity or by redemption or acceleration or otherwise as provided in the Indenture), and any such payment under the Credit Enhancement shall be deemed to satisfy the corresponding payment obligation of the Company to the extent of such payment. It is understood, however, that such payment under the Credit Enhancement shall not relieve the Company of any of its obligations under the Credit Provider Documents, including the obligation to reimburse the Credit Provider Agent for any draw under the Credit Enhancement.

(c) Notwithstanding anything in the foregoing to the contrary, if the amount on deposit and available in the Bond Fund is not sufficient to pay the principal of, redemption premium, if any, Sinking Fund Installments for, if any, and interest on the Bonds when due (whether at maturity or by redemption or acceleration or otherwise as provided in the Indenture), the Company shall forthwith pay the amount of such deficiency in immediately available funds to the Trustee for deposit in the Installment Purchase Payments Fund and such payment shall constitute installment purchase payments under this Section.

(d) In the event the Company should fail to make or cause to be made any of the payments required under the foregoing provisions of this Section, the item or installment not so paid shall continue as an obligation of the Company until the amount not so paid shall have been fully paid.

(e) The Company shall have the option to prepay its installment purchase obligation with respect to the Bonds, in whole or in part at the times and in the manner provided in Article VIII hereof as and to the extent provided in the Indenture for redemption of the Bonds.

(f) At its option, to be exercised on or before the forty-fifth (45th) day next preceding the date any Bonds of a Series are to be redeemed from mandatory Sinking Fund Installments, the Company may deliver to the Trustee Bonds of such Series which are subject to mandatory Sinking Fund Installment redemption in an aggregate principal amount not in excess of the principal amount of Bonds of such Series to be so redeemed on such date. Each such Bond so delivered shall be credited by the Trustee at one hundred percent (100%) of the principal amount thereof against the obligation of the Agency on such Sinking Fund Installment payment date and any excess over such Sinking Fund Installment shall be credited on future Sinking Fund Installments in direct chronological order, and the principal amount of Bonds to be redeemed by operation of the mandatory Sinking Fund Installments shall be accordingly reduced.

(g) No further installment purchase payments need be made to the Agency on account of the Bonds during the term of this Agreement when and so long as the amount of cash and/or Defeasance Obligations on deposit in the Bond Fund and as shall in each case constitute Priority Amounts, is sufficient to satisfy and discharge the obligations of the Agency under the Indenture and pay the Bonds as provided in Section 10.01 of the Indenture.

(h) The Company and the Agency acknowledge their intention to minimize the risk that any payment made to a Bondholder from amounts provided by or on behalf of the Company may be determined by a bankruptcy court to constitute a preference. To this end the parties agree that, as provided in Sections 5.06(a) of the Indenture, payments to Bondholders shall be made only from Priority Amounts, except when and to the extent no Priority Amounts are available for the purpose. The payment obligations of the Company under this Section are subject in all respects to the use of Priority Amounts for the payment of the Bonds. Optional prepayments permitted by the Company as provided in Article VIII hereof may not be made except from Priority Amounts. The Agency shall have no liability with respect to any payments made in violation of this paragraph.

(i) As security for the Bonds and the obligations of the Company under the Reimbursement Agreement and the other Credit Provider Documents, the Agency shall pledge and assign to the Trustee and the Credit Provider Agent pursuant to the Indenture, all of the Agency's right, title and interest in this Agreement (except for the Agency's Reserved Rights), including all installment purchase payments hereunder, and in furtherance of said pledge the Agency will unconditionally assign such installment purchase payments to the Trustee for deposit in the Installment Purchase Payments Fund in accordance with the Indenture. The Company hereby consents to the above-described pledge and assignment of this Agreement.

(j) The Company covenants and agrees that it will comply with the provisions of the Indenture with respect to the Company and that the Trustee shall have the power, authority, rights and protections provided in the Indenture. The Company further covenants to use its best efforts to cause there to be obtained for the Agency any documents or opinions required of the Agency under the Indenture.

Section 3.4. Obligation of Company Unconditional. The obligation of the Company to pay the installment purchase payments and all other payments provided for in this Agreement and to maintain the Facility in accordance with Section 4.1 of this Agreement shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or

counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Agency, the Trustee, the Credit Provider, the Credit Provider Agent, the Liquidity Provider, the Liquidity Provider Agent or the Holder of any Bond and the obligation of the Company shall arise whether or not the Project shall be completed, whether or not the Credit Provider shall honor or be honoring its obligations under the Credit Enhancement, or whether or not the Liquidity Provider shall honor or be honoring its obligations under the Liquidity Facility. The Company will not suspend or discontinue any such payment or terminate this Agreement (other than such termination as is provided for hereunder) for any cause whatsoever, and the Company waives all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or surrender this Agreement or any obligation of the Company under this Agreement or the Facility or any part thereof except as provided in this Agreement or to any abatement, suspension, deferment, diminution or reduction in the installment purchase payments or other payments hereunder.

Section 3.5. Payment for Tendered Series 2007 Bonds. (a) The Company agrees, as provided in Sections 2.10, 2.11, 2.12, 2.13 and 5.08 of the Indenture, to pay installment purchase payments to the Tender Agent, for the account of the Agency equal to all amounts necessary for the purchase of Series 2007 Bonds pursuant to Sections 2.10, 2.11, 2.12, 2.13 and 5.08 of the Indenture and not deposited with the Tender Agent by the Remarketing Agent from the proceeds of the sale of such Bonds under Section 5.08 of the Indenture or from drawings on or other realizations under the Liquidity Facility pursuant to Section 2.12(c) of the Indenture. Each such payment by the Company to the Tender Agent in accordance with this Section shall be in immediately available funds and paid to the Tender Agent at its principal office by 2:30 p.m., New York City time, on each Purchase Date. The Company further agrees to pay such immediately available funds to the Tender Agent at the times and in the manner specified in the Indenture.

(b) The Company shall provide for the payment of the amount to be paid pursuant to this Section by delivery of the Liquidity Facility to the Trustee (or the Tender Agent, as applicable), simultaneously with the issuance and delivery of the Series 2007 Bonds. The Company hereby authorizes and directs the Trustee (or the Tender Agent, as applicable) to draw moneys under the Liquidity Facility in accordance with the provisions of the Indenture to the extent necessary to make such payments when due. The obligation of the Company pursuant to this Section shall be deemed to be satisfied and discharged to the extent of any corresponding drawing made by the Trustee (or the Tender Agent, as applicable) on the Liquidity Facility and applied to such payment. It is understood, however, that such payment under the Liquidity Facility shall not relieve the Company of any of its obligations under the Reimbursement Agreement with the Liquidity Provider Agent or under the other Liquidity Provider Documents, including the obligation to reimburse the Liquidity Provider Agent for any draw under the Liquidity Facility.

(c) If the Trustee (or the Tender Agent, as applicable) shall draw amounts under the Liquidity Facility for the Purchase Price of Series 2007 Bonds pursuant to Section 2.12 of the Indenture, and the aggregate of the amounts transferred to the Liquidity Provider Agent by the Tender Agent pursuant to Section 2.12 of the Indenture after such drawing from the Reimbursement Account of the Purchase Fund shall be less than the amount required to reimburse the Liquidity Provider Agent in whole pursuant to the Reimbursement Agreement with the Liquidity Provider Agent, the Company will be obligated to pay to the Liquidity

Provider Agent an amount equal to such insufficiency in accordance with the terms of the Liquidity Provider Documents.

(d) The Company hereby approves and agrees to be bound by the provisions of the Indenture regarding the purchase, offer, sale and delivery of Series 2007 Bonds tendered for purchase thereunder, including particularly those set forth in Articles II, V, XIII and XIV of the Indenture. The Company shall have all of the rights and obligations provided in the Indenture with respect to the Company in connection with such transactions and the appointment of the Tender Agent and the Remarketing Agent thereunder. The Agency shall have no obligation or responsibility with respect to the purchase of Series 2007 Bonds or any related arrangements, except that the Agency at the expense of the Company shall cooperate in the making of any such arrangements.

(e) If the Company elects to cause the interest rate on the Series 2007 Bonds to be converted to a new interest rate mode pursuant to Article II of the Indenture other than from the Daily Mode to the Weekly Mode or vice versa, the Company shall deliver or cause to be delivered the notice, the Favorable Opinion of Bond Counsel (if so required under the Indenture) and such other documents required under the Indenture in connection with such conversion, all as provided in Article II of the Indenture. HOWEVER, THE COMPANY SHALL NOT CAUSE THE INTEREST RATE MODE TO BE CONVERTED TO A NEW INTEREST RATE MODE (OTHER THAN FROM A WEEKLY MODE TO A DAILY MODE OR VICE VERSA) UNLESS THE AGENCY SHALL DELIVER ITS WRITTEN CONSENT THERETO, AND, UNLESS WAIVED IN WRITING BY THE AGENCY (WHICH WAIVER SHALL BE IN THE SOLE AND ABSOLUTE UNLIMITED DISCRETION OF THE AGENCY), THE COMPANY SHALL CAUSE ON ANY MODE CHANGE DATE THE CREDIT ENHANCEMENT AND THE LIQUIDITY FACILITY TO EACH BE AN IRREVOCABLE DIRECT PAY LETTER OF CREDIT SATISFYING THE MINIMUM RATING REQUIREMENT, AND THE LIQUIDITY FACILITY SHALL SECURE THE PAYMENT OF PURCHASE PRICE OF SERIES 2007 BONDS TENDERED AT THE OPTION OF THE BONDHOLDERS. NONE OF THE CREDIT PROVIDER, THE CREDIT PROVIDER AGENT, THE LIQUIDITY PROVIDER OR THE LIQUIDITY PROVIDER AGENT SHALL HAVE ANY LIABILITY TO THE AGENCY OR THE TRUSTEE IN THE EVENT THAT THE THEN CURRENT CREDIT ENHANCEMENT OR LIQUIDITY FACILITY SHALL NOT SATISFY THE MINIMUM RATING REQUIREMENT.

(f) The Company shall cause the Credit Enhancement and the Liquidity Facility to be continuously maintained in full force and effect while the Series 2007 Bonds are in any interest rate mode other than the Fixed Rate Mode, in an amount equal to the principal amount of the Outstanding Series 2007 Bonds plus the amount required by the Rating Agencies then maintaining a rating for the Series 2007 Bonds for interest thereon, until all of the Series 2007 Bonds have been paid in full or their payment provided for in accordance with Article X of the Indenture. The Company will exercise its best efforts to extend the term of the Credit Enhancement and the Liquidity Facility currently in effect or to cause an Alternate Credit Enhancement and/or an Alternate Liquidity Facility or commitment of either therefor to be delivered by the Credit Provider and/or the Liquidity Provider, as applicable, to the Trustee not less than the fifth (5th) Business Day prior to the applicable Expiration Date pursuant to the provisions of Section 2.24 of the Indenture.

Section 3.6. Mortgages. The Company shall not create, permit or suffer to exist any Lien against the Facility or any part thereof, or the interest of the Company in the Facility or this Agreement except for Permitted Encumbrances. The Company covenants that it shall take or cause to be taken all action, including all filing and recording, as may be necessary to ensure that there are no mortgage Liens on, or security interests in, the Facility, other than Permitted Encumbrances.

Section 3.7. Continuing Disclosure. The Company hereby covenants and agrees that it will, if required by Securities and Exchange Commission Rule 15c2-12(b)(5), enter into and comply with and carry out all of the provisions of a continuing disclosure agreement in order for the Remarketing Agent to remarket the Bonds. Notwithstanding any other provision of this Agreement, failure of the Company to comply with such continuing disclosure agreement shall not be considered an Event of Default; however, the Trustee may (and, at the request of any participating underwriter or the Holders of at least twenty-five percent (25%) aggregate principal amount in Outstanding Bonds, shall, upon receipt of reasonable indemnification for its fees and costs acceptable to it), and any Holder or Beneficial Owner may, take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the Company to comply with its obligations under this Section 3.7. The Company understands and agrees that the Agency shall have no continuing disclosure obligations.

ARTICLE IV

Maintenance, Taxes Payments in Lieu of Taxes and Insurance

Section 4.1. Maintenance, Alterations and Improvements. (a) During the term of this Agreement, the Company will keep the Facility in good and safe operating order and condition, ordinary wear and tear excepted, will occupy, use and operate the Facility or cause the Facility to be occupied, used and operated, in the manner for which it was designed and intended and contemplated by this Agreement, and will make all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) reasonably necessary to ensure the continued operation by the Company of the Facility. All replacements, renewals and repairs shall be equal in quality, class and value to the original work and be made and installed in compliance with all applicable Legal Requirements. The Agency shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Facility, to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of the Facility, or to furnish any utilities or services for the Facility and the Company hereby agrees to assume full responsibility therefor.

(b) The Company may make such alterations of or additions to the Facility or any part thereof from time to time as the Company in its discretion may determine to be desirable for its uses and purposes; provided however that in any event (i) the structural integrity of the Facility is not impaired, (ii) such additions or alterations are effected with due diligence, in a good and workmanlike manner and in compliance with all applicable Legal Requirements, and (iii) such additions or alterations do not change the nature of the Facility so that it would not constitute a commercial facility and a qualified "project" as defined in and as contemplated by the Act. All alterations of and additions to the Facility shall constitute a part of the Facility, subject to this Agreement and the Indenture, and the Company shall deliver or cause to be delivered to the Agency appropriate documents as may be necessary to subject such property to this Agreement and the Indenture.

(c) The Company shall have the right to install or permit to be installed at the Facility machinery, equipment, furniture, furnishings and other personal property (the "Company's Property") without subjecting such property to this Agreement and the Indenture. The Agency shall not be responsible for any loss of or damage to the Company's Property. The Company shall have the right to create or permit to be created any Lien on, or conditional sale or other title retention agreement with respect to, the Company's Property.

(d) To the extent required by the New York State Finance Law §137, prior to executing any contract with any party for any improvement (as such term is defined in the New York Lien Law) in connection with the Project or the Facility or the provision of any goods or services in connection therewith, and prior to authorizing any party to undertake such improvement (or the provision of such goods and services) without a contract, the Company shall deliver to the Agency a copy of the proposed contract therefor along with a bond, in compliance with State Finance Law §137 and otherwise satisfactory to the Agency, guaranteeing prompt payment of monies due all persons furnishing labor or materials for the contractor or his subcontractor in the prosecution of his work provided for in such contract. The Agency shall

have no liability or responsibility for the cost of such bond(s). Should the Company fail to comply with the foregoing requirement, the Company shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked).

Section 4.2. [Reserved].

Section 4.3. No Exemption Based Upon Agency's Interest. It is recognized that under the provisions of the Act, the Agency is required to pay no real estate taxes upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities. In the event the Agency's interest in the Facility shall exempt the Facility or any portion thereof from the imposition of real estate taxes, then, the Company shall not claim an exemption from such real estate taxes by virtue of the Agency's interest in the Facility.

Section 4.4. Taxes, Assessments and Charges. The Company shall pay when the same shall become due all Impositions general and specific, if any, levied and assessed upon or against any of the Facility, this Agreement, the IDA Lease, any estate or interest of the Agency or the Company in the Facility, or the installment purchase payments hereunder during the term of this Agreement. The Company may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

In the event the Facility is exempt from Impositions solely due to the Agency's interest in the Facility, the Company shall pay all Impositions to the appropriate taxing authorities equivalent to the Impositions that would have been imposed on the Facility if the Agency had no interest in the Facility.

None of the foregoing prevents the Company from contesting in good faith the validity, existence or applicability of any of the foregoing if (i) such contest shall not result in the Facility or any part thereof or interest therein being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Company, the Agency, the Trustee, the Credit Provider, the Credit Provider Agent, the Liquidity Provider or the Liquidity Provider Agent being in any danger of any civil or any criminal liability other than normal accrual of interest, for failure to comply therewith, and (iii) the Company shall have furnished such security, if any, as may be reasonably requested by the Agency, the Trustee or the Credit Provider Agent.

Section 4.5. Insurance. (a) At all times throughout the term of this Agreement, including without limitation during any period of construction or reconstruction of the Facility, the Company shall maintain insurance, or cause the Board of Managers of the Condominium to maintain insurance, if applicable, against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as that of the Company, including, without limitation:

(i) During the period of Project construction with respect to the Facility, the coverage and requirements set forth in paragraph (ii) immediately following shall apply except that the amount thereof shall be \$125,000,000 (provided that during Project construction of the Facility, only the \$25,000,000 of excess coverage is required to be specific to the Facility in its coverage) and such coverage shall, in addition, insure against liability arising out of construction. During any other period of construction,

reconstruction or improvement, the coverage provided in paragraph (ii) immediately following shall apply in the coverage amount indicated in paragraph (ii) and such coverage shall, in addition, insure against liability arising out of construction. In addition to the foregoing, the Company shall, throughout the term of this Agreement, cause any contractor performing construction, reconstruction, renovation or improvement at the Facility to obtain liability insurance and such liability insurance shall (aa) satisfy the requirements of paragraph (ii) except as to amount, and (bb) be in the minimum aggregate amount of \$5,000,000, and (cc) satisfy all other pertinent requirements set forth in this Section 4.5, and (dd) insure against all liability arising out of construction;

(ii) Commercial general liability insurance (including contractual liability coverage, together with any umbrella or excess liability insurance) naming the Company as the primary insured, in accordance with customary insurance practices for similar operations with respect to the Facility and the business thereby conducted in a minimum amount of \$50,000,000 (aggregate of commercial general liability and umbrella/excess) for the Facility (or such lesser amount agreed upon by the Agency upon written request by the Company) per occurrence per location aggregate, which insurance (A) shall cover liability for death, personal injury and property damage arising with respect to matters covered by the Company's indemnity obligations under Section 6.2 of this Agreement, and (B) may be effected under overall blanket or excess coverage policies of the Company or any Affiliate thereof, provided, however, that at least \$1,000,000 is effected by a General Liability insurance policy, and (C) shall not contain any provisions for a deductible amount or self-insured retention (except that during Project construction of the Facility, such insurance may provide for a deductible of up to \$500,000);

(iii) Workers' compensation insurance (it being agreed that during Project construction of the Facility, workers' compensation insurance may provide for a deductible of up to \$250,000), disability benefits insurance, employer's liability coverage (\$1,000,000 minimum coverage for each accident), and such other forms of insurance which the Company or the Agency is required by law to provide covering loss resulting from injury, sickness, disability or death of the employees of the Company or any Affiliate thereof, or any contractor or subcontractor performing work with respect to the Facility; the Company shall require that all said contractors and subcontractors shall maintain all forms or types of insurance with respect to their employees required by laws;

(iv) During any period of construction, reconstruction, renovation or improvement, including but not limited to Project construction, any contractor performing work on or providing services to the Facility premises, shall obtain automobile liability insurance covering owned, non-owned, and/or hired automobiles, forklifts and other drivable machinery and/or vehicles used in connection with the Facility, in the minimum aggregate amount of \$5,000,000;

(v) Automobile liability insurance, to the extent not covered by the general liability insurance, in the amount of \$1,000,000 (or such lesser amount agreed upon by the Agency upon written request by the Company) covering the Company for all owned, non-owned and/or hired automobiles used in connection with the Facility, such coverage to provide for minimum \$1,000,000 per accident resulting from use, operation

and/or maintenance of such automobiles and minimum \$1,000,000 for uninsured or under-insured motorists;

(vi) During Project construction of the Facility, environmental liability insurance, in the amount of \$25,000,000 (or such lesser amount agreed upon by the Agency upon written request by the Company) covering the Facility, provided that there shall be only \$2,000,000 of environmental liability insurance for (y) third party claims for on-site or off-site bodily injury, property damage or clean-up costs for non-owned locations, or (z) pollution conditions resulting from transported cargo; and

(vii) Such other insurance, including revision of the insurance requirements set forth above, in such amounts and against such insurable hazards as the Agency from time to time may reasonably require.

(b) All insurance required by Section 4.5(a) above shall be procured from and maintained with financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and having an A.M. Best rating that is commercially reasonable and customarily required by other enterprises of like size and type as that of the Company and acceptable to the Agency. The Agency may change such rating requirements on a nondiscriminatory basis (i.e. on a basis upon which all similar projects of the Agency are treated similarly) if required by substantial changes in insurance industry premiums, risks or coverage. At least once every two fiscal years, the Company agrees to deliver a certificate of an independent insurance consultant to the Trustee, the Credit Provider Agent and the Agency which indicates that the insurance then maintained by the Company meets the requirements of Section 4.5(a) hereof.

(c) Each of the policies or certificates evidencing the insurance required above to be obtained shall (and regardless by whom obtained):

(i) designate the Company as primary insured, and designate (except in the case of workers' compensation insurance) the Agency and the Trustee as additional insureds on a primary, non-contributing basis;

(ii) provide that there shall be no recourse against the Agency or the Trustee for the payment of premiums or commissions or (if such policies or binders provide for the payment thereof) additional premiums or assessments;

(iii) provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by the Agency or the Trustee to the extent that such other insurance provides the Agency or the Trustee with contingent and/or excess liability insurance with respect to its respective interest as such in the Facility;

(iv) provide that if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, reduction or change shall not be effective as to the Agency or the Trustee until at least

thirty (30) days after receipt by the Agency and the Trustee of written notice by such insurers of such cancellation, reduction or change;

(v) all liability coverage required by this Section 4.5 must include extended, completed-operations coverage for an additional five (5) years past completion of the Facility;

(vi) waive any right of subrogation of the insurers thereunder against any Person insured under such policy, and waive any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any Person insured under such policy; and

(vii) contain such other terms and provisions as any owner or operator of facilities similar to the Facility would, in the prudent management of its properties, require to be contained in policies or interim insurance contracts with respect to facilities similar to the Facility owned or operated by it.

(d) The Company shall deliver or cause to be delivered to the Agency and the Trustee, in a form acceptable to the Agency and the Trustee, the following documents evidencing compliance with the insurance requirements of this Section 4.5: (i) prior to the Closing Date: (A) an ACCORD certificate of insurance, upon which the Agency and the Trustee may conclusively rely in order to confirm compliance with the requirements of this Section, confirming that the Company, as of the Closing Date, has obtained insurance in accordance with the requirements of this Section, and (B) the declaration pages and the schedules of endorsements that will be appended to (and a part of) the policies providing for all liability coverage required under this Section 4.5, and (ii) as soon as practicable thereafter, duplicate copies of insurance policies and/or binders. At least seven (7) Business Days prior to the expiration of any such policy, the Company shall furnish the Agency and the Trustee with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

(e) The Company shall, at its own cost and expense, take, or cause the Condominium Board to take, all steps necessary or reasonably requested by the Agency or the Trustee to collect from insurers for any loss covered by any insurance required to be obtained by this Section. The Company shall not do any act, or suffer or permit any act to be done, whereby any insurance required by this Section would or might be suspended or impaired.

(f) Notwithstanding anything that may be to the contrary in this Section 4.5, if the Company or the Board of Managers of the Condominium or any operator of the Facility obtains and maintains terrorism insurance with respect to the Facility, and if such terrorism insurance insures against liability, then, in such event, the Agency and the Trustee shall be named as additional insureds (on a primary and non-contributing basis) on such liability policy. The Company shall annually submit to the Agency by July 31 of each year commencing July 31, 2008, a certificate of an Authorized Representative of the Company certifying as to whether terrorism insurance insuring against liability in connection with the Facility has been obtained. If such insurance has been obtained, then the Company shall append to such certificate (i) a broker's certificate of coverage, upon which the Agency may conclusively rely, in order to confirm compliance with the requirements of this Section 4.5(f), and (ii) a schedule of

endorsements indicating that the Agency and the Trustee are additional insureds on such policy, on a primary and non-contributing basis.

(g) The foregoing provisions requiring that the Company obtain insurance are in addition to any other requirements for insurance set forth in any Credit Facility Mortgage or Development Security Document or any other related document.

(h) THE AGENCY DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE BUSINESSES OR INTERESTS OF THE COMPANY.

Section 4.6. Advances by Agency, Trustee or Credit Provider Agent. In the event the Company fails to make any payment or perform or observe any obligation required of it under this Agreement, the Agency, the Trustee or the Credit Provider Agent, after first notifying the Company of any such failure on its part, may (but shall not be obligated to), and without waiver of any of the rights of the Agency, the Trustee or the Credit Provider Agent under this Agreement, the Credit Provider Documents, the Indenture or any other Project Documents, make such payment or otherwise cure any failure by the Company to perform and observe its other obligations hereunder. All amounts so advanced therefor by the Agency, the Trustee or the Credit Provider Agent shall become an additional obligation of the Company to the Agency, the Trustee or the Credit Provider Agent, as applicable, which amounts, together with interest thereon at the annual rate of eighteen percent (18%) per annum from the date advanced, the Company will pay upon demand therefor by the Agency, the Trustee or the Credit Provider Agent, as the case may be. Any remedy herein vested in the Agency, the Trustee or the Credit Provider Agent for the collection of the installment purchase payments or other amounts due hereunder shall also be available to the Agency, the Trustee or the Credit Provider Agent for the collection of all such amounts so advanced.

Section 4.7. Compliance with Legal Requirements. The Company agrees that it will, throughout the term of this Agreement and at its sole cost and expense, promptly observe and comply with all Legal Requirements, whether foreseen or unforeseen, ordinary or extraordinary, which shall now or at any time hereafter be binding upon or applicable to the Company, any occupant, user or operator of the Facility or any portion thereof, and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including, without limitation, zoning variances, special exception and non-conforming uses), privileges, franchises and concessions. The Company will not, without the prior written consent of the Agency, the Credit Provider Agent and the Trustee, initiate, join in or consent to any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or defining the uses which may be made of the Facility or any part thereof. The Company shall indemnify and hold harmless the Indemnified Parties (as defined in Section 6.2 hereof) from and against all loss, cost, liability and expense (a) in any manner arising out of or related to any violation of or failure to comply with any Legal Requirement or (b) imposed upon the Company, or any of the Indemnified Parties by any Legal Requirement; in case any action or proceedings is brought against any of the Indemnified Parties in respect to any Legal Requirement, the Company shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel reasonably satisfactory to the Indemnified Party.

The Company may contest in good faith the validity, existence or applicability of any of the foregoing if (i) such contest shall not result in the Facility or any part thereof or interest therein being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Company, the Agency, the Trustee, the Credit Provider or the Credit Provider Agent being in any danger of any civil or any criminal liability other than normal accrual of interest, for failure to comply therewith, and (iii) the Company shall have furnished such security, if any, as may be requested by the Agency, the Trustee or the Credit Provider Agent to protect the security intended to be offered by the Project Documents. As between the Credit Provider Agent and the Company, the right of the Company to contest compliance with any Legal Requirements is subject to the terms of the Credit Provider Documents.

ARTICLE V

Damage, Destruction and Condemnation

Section 5.1. Damage, Destruction and Condemnation. (a) In the event that at any time during the term of this Agreement the whole or a material part of the Facility shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or by agreement between the Company or any other Person having an interest in the Facility and those authorized to exercise such right or if the temporary use of the Facility shall be so taken by condemnation or agreement (a "Loss Event"):

(i) the Agency shall have no obligation to rebuild, replace, repair or restore the Facility,

(ii) there shall be no abatement, postponement or reduction in the installment purchase payments or other amounts payable by the Company under this Agreement or under any other Project Document, and

(iii) the Company will promptly give written notice of such Loss Event to the Agency, the Trustee and the Credit Provider Agent, generally describing the nature and extent thereof.

(b) Upon the occurrence of a Loss Event, the Company shall either:

(i) at its own cost and expense (except to the extent paid from the Net Proceeds), within two (2) years of the Loss Event, promptly and diligently rebuild, replace, repair or restore the Facility (or cause the Condominium Board to rebuild, replace, repair or restore the Facility) to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, regardless of whether or not the Net Proceeds derived from the Loss Event shall be sufficient to pay the cost thereof, and the Company shall not by reason of payment of any such excess costs be entitled to any reimbursement from the Agency, the Credit Provider, the Credit Provider Agent, the Liquidity Provider, the Liquidity Provider Agent, the Trustee or any Bondholder, nor shall the installment purchase payments or other amounts payable by the Company under this Agreement or any other Project Document be abated, postponed or reduced, or

(ii) if, to the extent and upon the conditions permitted to do so under Section 8.1 hereof and under the Indenture, exercise its option to terminate this Agreement and make or cause to be made advance installment purchase payments to redeem the Bonds in whole and terminate the Agency's interest in the Facility.

Not later than one hundred twenty (120) days after the occurrence of a Loss Event, the Company shall advise the Agency, the Trustee and the Credit Provider Agent in writing of the action to be taken by the Company under this Section 5.1(b), a failure to so timely notify being deemed an election in favor of clause (i) above to be exercised in accordance with the provisions of clause (i) above.

If, to the extent permitted under this Agreement and the Indenture, the Company shall exercise its option in clause (ii) above, the Company shall cause the Trustee to draw on the Credit Enhancement to effect the redemption in whole of the Bonds under the Indenture.

It is acknowledged and agreed by the Agency and the Company that the determination to rebuild, replace, repair or restore the Facility may reside solely within the control of a Person unrelated to the Company (e.g., the Condominium Board for the Condominium, or any mortgagee under a Development Security Document or under a Credit Provider Mortgage) having a superior interest in the Facility, and such Person may elect, in lieu of the Company, to require that the Net Proceeds not be applied to rebuild, replace, repair or restore the Facility. In the event that the Net Proceeds shall not be applied to rebuild, replace, repair or restore the Facility as set forth in clause (i) above, and the Company shall not otherwise rebuild, replace, repair or restore the Facility, the Company shall exercise its option under clause (ii) above.

(c) All such rebuilding, replacements, repairs or restorations shall

(i) automatically be deemed a part of the Facility and be subject to this Agreement,

(ii) not change the nature of the Facility as a qualified "project" as defined in and as contemplated by the Act, and

(iii) be effected with due diligence in a good and workmanlike manner, in compliance with all applicable Legal Requirements and be promptly and fully paid for by the Company in accordance with the terms of the applicable contract(s) therefor.

(d) The Agency, the Credit Provider Agent and the Company shall cooperate and consult with each other in all matters pertaining to the settlement, compromising, arbitration or adjustment of any claim or demand on account of any Loss Event, and the settlement, compromising, arbitration or adjustment of any such claim or demand shall be subject to the approval of the Company and the Credit Provider Agent (such approvals not to be unreasonably withheld).

(e) If all or substantially all of the Facility shall be taken or condemned, or if the taking or condemnation renders the Facility unsuitable for use by the Company as contemplated hereby, the Company shall exercise its option to terminate this Agreement pursuant to Section 8.1 hereof, and the Trustee shall draw on the Credit Enhancement to effect the redemption in whole of the Bonds under the Indenture, and to the extent necessary, the Company shall pay or cause to be paid to the Trustee Priority Amounts which, when added to any Priority Amounts then in the Bond Fund and available for that purpose, shall be sufficient to retire and redeem the Bonds in whole at the earliest possible date (including, without limitation, principal and interest to the maturity or redemption date and redemption premium, if any), and shall pay the expenses of redemption, the fees and expenses (including counsel fees and expenses) of the Agency, the Bond Registrar, the Tender Agent, the Remarketing Agent, the Trustee, the Credit Provider Agent, the Liquidity Provider Agent, the Auction Agent, the Broker-Dealer and the Paying Agents, together with all other amounts due under the Indenture and under this Agreement and under each other Security Document, and such amount shall be applied,

together with such other Priority Amounts in the Bond Fund, if applicable, to such redemption or retirement of the Bonds on said redemption or maturity date.

(f) The Company shall be entitled to any insurance proceeds or condemnation award, compensation or damages attributable to Company's Property or other improvements, machinery, equipment or other property installed on or about the Facility that, at the time of such damage or taking, is not part of the Facility.

(g) The Company hereby waives the provisions of Section 227 of the New York Real Property Law or any law of like import now or hereafter in effect.

ARTICLE VI

Particular Covenants

Section 6.1. Dissolution or Merger; Restriction on Company.

(a) The Company hereby covenants and agrees that at all times prior to the Project Completion Date, it will (except if the Agency, the Trustee and the Credit Provider Agent, shall, in each of their sole and unlimited absolute discretion, consent in writing to any of the acts prohibited below):

- (i) maintain its existence as a Delaware limited liability company;
- (ii) continue to be a limited liability company subject to service of process in the State and either organized under the laws of the State or authorized to conduct business in the State;
- (iii) not voluntarily liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the Closing Date;
- (iv) not sell, transfer, pledge or otherwise encumber all or substantially all of its assets remaining after the Closing Date other than Permitted Encumbrances;
- (v) not consolidate with or merge into another or permit one or more entities to consolidate with or merge into it; and
- (vi) not permit the transfer to any Person of any direct or indirect membership interests in the Company or any Company Parent (whether directly or indirectly) nor permit Joseph Moinian to no longer maintain and exercise day to day Control of the Company, except that:

(1) a Permitted Transfer may be effective if (y) any such transferee is an Approved Transferee, and (z) except in the event of the death or incapacity of Joseph Moinian, Joseph Moinian would continue to maintain and exercise day to day Control of the Company;

(2) a transfer of membership interests in the Company or any Company Parent, or a transfer of ownership of the Facility, to any Person in connection with a foreclosure or other similar remedial action arising in connection with a default under a Mezzanine Financing or under a Mortgage Financing, provided that (y) such transfer of membership interests or ownership of the Facility was effected in connection with the exercise of remedies pursuant to a good-faith arms-length Mezzanine Financing or Mortgage Financing with the defaulting borrower, and (z) the transferee shall be an Approved Transferee, or

(3) a transfer of membership interests in the Company or any Company Parent arising as a result of the death or incapacity of Joseph Moinian if the transferee shall be an Approved Transferee.

(b) On and after the Project Completion Date, the Company may consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it, or sell or otherwise transfer all or substantially all of its property, business or assets to another such entity (and thereafter liquidate, wind-up or dissolve or not, as the Company may elect) if:

- (i) the Company is the surviving, resulting or transferee entity; or
- (ii) in the event that the Company is not the surviving, resulting or transferee entity:

(1) such entity (A) is solvent and subject to service of process in the State and organized under the laws of the State or any other state, (B) is in good standing in the State, and (C) assumes in writing all of the obligations of the Company contained in this Agreement and all other Security Documents and Project Documents to which the Company shall be a party, and in the Opinion of Counsel delivered to the Agency, the Credit Provider Agent and the Trustee (x) such entity shall be bound by all of the terms applicable to the Company of this Agreement and all other Security Documents and Project Documents to which the predecessor Company shall have been a party, and (y) such action does not legally impair the security afforded by the Security Documents and the Indemnity Guaranty Agreement;

(2) the Company delivers to the Agency, the Credit Provider Agent and the Trustee an Opinion of Bond Counsel to the effect that such merger, consolidation, sale or transfer will not adversely affect the validity of the Bonds or the excludability of interest on the Bonds from gross income under the Code;

(3) each of the surviving, resulting or transferee entity and its Principals is an Approved Transferee; and

(4) such surviving, resulting or transferee entity shall utilize the Facility as a qualified "project" within the meaning of the Act; and

(iii) in all cases, such transaction shall be permitted pursuant to the terms of the Project Documents and the Security Documents.

(c) On and after the Project Completion Date, the Company may permit the transfer directly or indirectly of its direct or indirect membership interests to any Person so long as such surviving, resulting or transferee entity is an Approved Transferee.

(d) The Company covenants and agrees that any Person who shall be an Approved Transferee at the time of any of the transactions described above in this Section 6.1, shall remain an Approved Transferee throughout the remainder of the term of this Agreement.

Section 6.2. Indemnity. (a) The Company shall at all times indemnify, defend, protect and hold the Agency, the Trustee, the Bond Registrar, the Paying Agents, the Credit Provider, the Credit Provider Agent, the Liquidity Provider, the Liquidity Provider Agent, the Tender Agent, the Auction Agent and the Broker-Dealer and any director, member, officer, employee, servant, agent (excluding for this purpose the Company, which is not obligated hereby

to indemnify its own employees, Affiliates or affiliate individuals) of any of such Persons and persons under the control or supervision of any of such Persons (collectively, the "Indemnified Parties") harmless of, from and against any and all claims (whether in tort, contract or otherwise), taxes (of any kind and by whomsoever imposed), demands, penalties, fines, liabilities, lawsuits, actions, proceedings, settlements, costs and expenses (collectively, "Claims") of any kind for losses, damage, injury and liability (collectively, "Liability") of every kind and nature and however caused (except, with respect to any Indemnified Party, Liability arising from the gross negligence or willful misconduct of such Indemnified Party), arising during the period commencing from July 11, 2006, the date the Agency adopted its preliminary resolution for the Series 2007 Bonds, and continuing throughout the term of this Agreement (subject to Section 6.2(e) hereof), arising upon or about the Facility or resulting from, arising out of, or in any way connected with:

(i) the financing or refinancing of the costs of the Facility and the marketing, offering, issuance, sale and remarketing of the Bonds for such purpose, including, without limitation, any federal or state securities law liability, excluding, however, any Claim or Liability against the Agency resulting from the Agency's having made any untrue statement of any material fact, or having omitted to state a material fact, necessary to make the statements under the headings "THE AGENCY" and "LITIGATION—The Agency" in the Official Statement of the Agency and the Company distributed in connection with the original sale of the Series 2007 Bonds, in the light of the circumstances under which such statements were made, not misleading;

(ii) the planning, design, acquisition, site preparation, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Facility, or any defects (whether latent or patent) in the Facility or any of the work done on or about the Facility, the Development or the Condominium,

(iii) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Development or any portion thereof, or the Facility or any portion thereof, or the payment of any common charges or other costs in connection with the Condominium, the Development or the Facility,

(iv) the execution and delivery by the Indemnified Party, the Company or any other Person of, or performance by the Indemnified Party, the Company or any other Person, as the case may be, of, any of their respective obligations under, this Agreement, the Indenture or any other Project Document, or other document or instrument delivered in connection herewith or therewith or the enforcement of any of the terms or provisions hereof or thereof or the transactions contemplated hereby or thereby,

(v) any injury to any Person or any damage to the personal property of any Person in or on the premises of the Facility, the Development or the Condominium,

(vi) any imposition arising from, burden imposed by, violation of, or failure to comply with any Legal Requirement, including, but not limited to, failure to

comply with the requirements of the City's zoning resolution and the State Environmental Quality Review Act and their respective related regulations,

(vii) any injury to the person or any damage to the property of (A) the Company, or (B) any other Person or their respective officers, directors, officials, partners, members, employees, attorneys, agents or representatives, or persons under the control or supervision of the Company or (C) any other Person who may be in or about the premises of the Facility, the Development or the Condominium,

(viii) the presence, disposal, release, or threatened release of any Hazardous Materials (as hereinafter defined) that are on, from, or affecting the Facility, the Development or the Condominium; any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or any violation of Legal Requirements, including demands of government authorities, or any policies or requirements of the Agency, the Credit Provider or the Trustee, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses; or

(ix) any Claim commenced against an Indemnified Party, or other action or proceeding taken by an Indemnified Party, in any case with respect to any of the matters set forth in subparagraphs (i) through (viii) of this Section 6.2(a).

Such indemnification set forth above shall be binding upon the Company for any and all Claims set forth herein and shall survive the termination of this Agreement.

(b) The Company releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable to the Company or its Affiliates for, any Claims or Liability arising from or incurred as a result of action taken or not taken by such Indemnified Party with respect to any of the matters set forth in Section 6.2(a) hereof or at the direction of the Company or any other obligor under any of the Project Documents with respect to any of such matters above referred to, excluding, however, as to any Indemnified Party, any Claims or Liability arising from or incurred as a result of the gross negligence or willful misconduct of such Indemnified Party. An Indemnified Party shall promptly notify the Company in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Company pursuant to this Section; such notice shall be given in sufficient time to allow the Company to defend or participate in such claim or action, but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Company under this Section.

(c) (i) In addition to and without limitation of any other representations, warranties and covenants made by the Company under this Agreement, the Company further represents, warrants and covenants that, to the best of its knowledge after due and diligent inquiry, the Company has not used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, except as set forth in that certain Phase I Environmental Site Assessment,

dated January 18, 2007, prepared by IVI Due Diligence Services, Inc., a true and correct copy of which the Company has delivered to the Agency (the "Audit"), to the best of the Company's knowledge, no prior owner or occupant of the Facility has used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements.

(ii) Without limiting the foregoing, the Company shall not cause or permit the Facility or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Legal Requirements, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company or any occupant or user of the Facility, a release of Hazardous Materials onto the Facility or onto any other property not in compliance with all applicable Legal Requirements.

(iii) The Company shall comply with and ensure compliance by all occupants and users of the Facility with all applicable Legal Requirements, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all occupants and users of the Facility obtain and comply with, any and all approvals, registrations or permits required thereunder; provided, however, that if any such occupant or user shall be an Affiliate of the Company, the obligations of the Company with respect to such Persons shall be absolute and not limited to best efforts.

(iv) The Company shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials, on, from, or affecting the Facility in accordance with all applicable Legal Requirements.

(v) The parties hereto agree that the reference in this Section to the Audit is not intended, and should not be deemed to intend, to modify, qualify, reduce or diminish the Company's obligations to carry out and perform all of the covenants stated throughout this Section, including but not limited to, those covenants wherein the Company is obligated to indemnify each Indemnified Party and comply with all applicable Legal Requirements pertaining to Hazardous Materials.

For purposes of this Section, the term "Hazardous Materials" means any hazardous or toxic waste or substances or petroleum products which must be removed or abated from the Facility and disposed of in accordance with applicable Legal Requirements.

(d) To effectuate the purposes of this Section, the Company will provide for and insure, in the public liability policies required in Section 4.5 hereof, the liability of the Agency (commencing on the Closing Date) for death, personal injury and property damage arising with respect to matters covered by the Company's indemnity obligations pursuant to this Section. Anything to the contrary in this Agreement notwithstanding, the indemnification and release covenants of the Company contained in this Section shall remain in full force and effect after the termination of this Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by the Indemnified Party relating to the enforcement of the provisions herein specified.

(e) For the purposes of this Section, the Company shall not be deemed an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

(f) The provisions of this Section shall be in addition to, and neither limit nor impair, the obligations of the Company under the Credit Provider Documents, and any and all other obligations and liabilities the Company may have to any Indemnified Party in any other agreement or at common law.

Section 6.3. Compensation and Expenses of Trustee, Bond Registrar, Tender Agent, Remarketing Agent, Paying Agents, Auction Agent, Broker-Dealer, Credit Provider, Liquidity Provider and Agency. The Company shall, to the extent not paid out of the proceeds of the Bonds as financing expenses, pay the following fees, charges and expenses and other amounts: (i) the initial and annual fees of the Trustee for the ordinary services of the Trustee rendered and its ordinary expenses incurred under the Indenture, including fees and expenses as Bond Registrar and in connection with preparation of new Bonds upon exchanges or transfers or making any investments in accordance with the Indenture, including counsel fees and expenses), (ii) the fees and charges of the Trustee and any Paying Agents on the Bonds for acting as paying agents as provided in the Indenture, including the fees and expenses of its counsel, (iii) the fees, charges, and expenses of the Trustee for extraordinary services rendered by it under the Indenture, including counsel fees and expenses, (iv) the fees, costs and expenses of the Bond Registrar, the Tender Agent, the Broker-Dealer, the Auction Agent and the Remarketing Agent, and the fees, costs and expenses (including accounting and other administrative expenses and reasonable legal fees and expenses) of the Agency, (v) the annual fee of the Credit Provider as provided in the Credit Provider Documents and the costs and expenses of the Credit Provider in connection therewith, and (vi) the annual fee of the Liquidity Provider as provided in the Liquidity Provider Documents and the costs and expenses of the Liquidity Provider in connection therewith. The Company shall further pay the fees, costs and expenses of the Agency together with any disbursements and reasonable fees incurred by the Agency's Bond Counsel and General Counsel in performing services for the Agency in connection with this Agreement or any other Project Document.

On the Closing Date, the Company shall pay to the Agency its fee of \$475,000 (said amount representing the \$500,000 financing fee, less an application fee of \$25,000), together with the State Bond Fee in the amount of \$350,000.

Section 6.4. Retention of Interest in Facility; Grant of Easements. (a) The Company shall not sell, assign, encumber (other than Permitted Encumbrances), convey or otherwise dispose of its interests in the Facility or any part thereof or interests therein during the term of this Agreement, except as set forth below and in Sections 5.1, 6.1 and 9.3 hereof, without the prior written consent of the Agency and of the Credit Provider Agent and any purported disposition without such consent shall be void.

(b) The Company may, with the prior written consent of the Credit Provider Agent, so long as there exists no Event of Default hereunder, grant such rights of way or easements over, across, or under, the Facility, or grant such permits or licenses in respect to the use thereof, free from the leasehold estate of the IDA Lease and the Lien of this Agreement (i.e., the leasehold estate of the IDA Lease and the Lien of this Agreement shall be subordinate to such rights of way or easements), as shall be necessary or convenient for the operation or use of

the Facility, provided that such rights-of-way, easements, permits or licenses shall not adversely affect the use or operation of the Facility, and provided, further, that, to the extent any such grant shall not be within the ordinary cause of business with respect to the operation of the Facility, the Company shall further cause Bonds to be redeemed (through a draw by the Trustee under the Credit Enhancement) in the amount (to the nearest integral multiple of Authorized Denomination of the Bonds) of any consideration received by the Company from the granting of said rights of way, easements, permits or licenses. On or prior to any such redemption of the Bonds, if such redemption shall be required, the Company shall cause all such consideration received by the Company to be promptly paid over to the Trustee for deposit in the Installment Purchase Payments Fund to be applied to reimburse the Credit Provider Agent for amounts drawn under the Credit Enhancement to effect such redemption. The Agency agrees, at the sole cost and expense of the Company, to execute and deliver and to cause and direct the Trustee to execute and deliver any and all instruments necessary or appropriate to confirm and grant any such right of way or easement or any such permit or license and to release the same from this Agreement.

(c) No conveyance or release effected under the provisions of this Section shall entitle the Company to any abatement or diminution of the installment purchase payments payable under Sections 3.3 or 3.5 hereof or the other payments required to be made by the Company under this Agreement or under any other Security Document.

Section 6.5. Company's Covenant as to Tax Exemption. (a) The Company covenants with the Agency, with the Credit Provider Agent, with the Liquidity Provider, with the Trustee and with each of the Holders of the Bonds, that it will comply with all of the terms, provisions and conditions set forth in the Tax Regulatory Agreement, including, without limitation, the making of any payments and filings required thereunder.

(b) The representations, warranties, covenants and statements of expectation of the Company set forth in the Tax Regulatory Agreement are by this reference incorporated in this Agreement as though fully set forth herein.

(c) If any Bondholder receives from the Internal Revenue Service a notice of assessment and demand for payment with respect to interest on any Bond, an appeal may be taken by the Bondholder at the option of either the Bondholder or the Company. If such appeal is taken at the option of the Company, all expenses of the appeal including reasonable counsel fees and expenses shall be paid by the Company, and the Company shall control the procedures and terms relating to such appeal, and the Bondholder and the Company shall cooperate and consult with each other in all matters pertaining to any such appeal which the Company has elected to take, except that no Bondholder shall be required to disclose or furnish any non-publicly disclosed information, including without limitation, financial information and tax returns. Before the taking of any appeal which the Company has elected to take, however, the Bondholder shall have the right to require the Company to either pay the tax assessed and conduct the appeal as a contest for reimbursement, or post security with the Bondholder of a form and in an amount acceptable to the Bondholder.

(d) Not later than one hundred twenty (120) days following a Determination of Taxability, the Company shall cause the Bonds to be redeemed in whole or in part as required under Section 2.09(f) of the Indenture.

(e) The obligation of the Company to make the payments provided for in this Section shall be absolute and unconditional, and the failure of the Agency, the Trustee, the Credit Provider, the Credit Provider Agent, the Liquidity Provider, the Liquidity Provider Agent or any other Person to execute or deliver or cause to be delivered any documents or to take any action required under this Agreement or otherwise shall not relieve the Company of its obligation under this Section.

Section 6.6. Financial Statements; No-Default Certificates. (a) The Company agrees to furnish to the Trustee and the Credit Provider Agent (and, if so requested, the Agency), as soon as available and in any event within one hundred fifty (150) days after the close of each Fiscal Year of the Company, a copy of the annual audited financial statements, and variance report, of the Company, including balance sheets as at the end of such year, and the related statements of income, balances, earnings, retained earnings and changes in financial position for such Fiscal Year, prepared in accordance with generally accepted accounting principles and practices and shall include a statement of financial position balance sheet), statement of activities (revenue and expenses), expenses and charges to the fund balance, cash flow statement and supporting schedule of functional expenses with such notes as are deemed necessary to present fairly the financial condition of the Company, accompanied by an opinion of an independent certified public accountant who is reasonably acceptable to the Agency, the Trustee and the Credit Provider Agent.

(b) The Company shall deliver to the Credit Provider Agent and the Trustee (and, if so requested, the Agency) with each delivery of annual financial statements pursuant to Section 6.6(a) hereof, a certificate of an Authorized Representative of the Company as to whether or not, to the best knowledge of the Company after due and diligent inquiry, as of the close of such preceding Fiscal Year of the Company, and at all times during such Fiscal Year, the Company was in compliance with all the provisions which relate to the Company in this Agreement and in any other Project Document to which it shall be a party, and if such Authorized Representative shall have obtained knowledge of any default in such compliance or notice of such default, he shall disclose in such certificate such default or defaults or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default hereunder, and any action proposed to be taken by the Company with respect thereto, and a certificate of an Authorized Representative of the Company that the insurance it maintains complies with the provisions of Section 4.5 of this Agreement, that such insurance has been in full force and effect at all times during the preceding Fiscal Year of the Company, and that duplicate copies of all policies or certificates thereof have been filed with the Agency, the Credit Provider Agent and the Trustee and are in full force and effect. In addition, upon twenty (20) days prior request by the Agency, the Credit Provider Agent or the Trustee, the Company will execute, acknowledge and deliver to the Agency, the Credit Provider Agent and the Trustee a certificate of an Authorized Representative of the Company either stating that to his knowledge no default or breach exists hereunder or specifying each such default or breach of which he has knowledge.

(c) The Company shall immediately notify the Agency, the Credit Provider Agent and the Trustee of the occurrence of any Event of Default or any event which with notice and/or lapse of time would constitute an Event of Default under any Project Document of which it has knowledge. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Representative of the Company and set forth a description of the default and the

steps, if any, being taken to cure said default. If no steps have been taken, the Company shall state this fact on the notice.

(d) The Company shall deliver to the Agency on July 31 of each year, commencing July 31, 2008, a completed location and contact information report in the form attached hereto as Schedule D.

Section 6.7. Discharge of Liens. (a) If any lien, encumbrance or charge is filed or asserted, or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "Liens"), whether or not valid, is made against the Facility or any part thereof or the interest therein of the Agency, the Company, the Credit Provider Agent or the Trustee or against any of the installment purchase payments or other amounts payable under this Agreement or the IDA Lease or the interest of the Company under this Agreement other than Liens for Impositions not yet payable, Permitted Encumbrances, or Liens being contested as permitted by Section 6.7(b) hereof, the Company forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Agency, the Credit Provider Agent and the Trustee and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Facility.

(b) The Company may at its sole expense contest (after prior written notice to the Agency, the Credit Provider Agent and the Trustee), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (1) such proceeding shall suspend the execution or enforcement of such Lien against the Facility or any part thereof or interest therein, or in this Agreement or in the IDA Lease of the Agency, the Company, the Trustee or the Credit Provider Agent or against any of the installment purchase payments or other amounts payable under this Agreement, (2) neither the Facility nor any interest therein would be in any danger of being sold, forfeited or lost, (3) neither the Company, the Agency, the Credit Provider, the Credit Provider Agent, nor the Trustee would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (4) the Company shall have furnished such security, if any, as may be required in such proceedings or as may be requested by the Agency, the Trustee or the Credit Provider Agent to protect the security intended to be offered by the Security Documents. As between the Credit Provider Agent and the Company, the right of the Company to contest any Lien is subject to the terms of the Credit Provider Documents.

Section 6.8. Agency's Authority. The Agency covenants and agrees that it has full right and lawful authority to enter into this Agreement for the full term hereof.

Section 6.9. No Warranty of Condition or Suitability. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE

FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE COMPANY OR THE EXTENT TO WHICH PROCEEDS DERIVED FROM THE SALE OF THE BONDS WILL BE SUFFICIENT TO PAY THE COST OF THE PROJECT. THE COMPANY IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR ITS PURPOSES. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE COMPANY OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

Section 6.10. Amounts Remaining in Funds. It is agreed by the parties hereto that any amounts remaining in the Earnings Fund, the Rebate Fund, the Bond Fund, the Installment Purchase Payments Fund, the Project Fund or the Purchase Fund upon the expiration or sooner or later termination of the term of this Agreement as provided in this Agreement, after payment in full of (i) the Bonds (in accordance with Section 10.01 of the Indenture), (ii) the fees, charges and expenses (including counsel fees and expenses) of the Trustee, the Tender Agent, the Remarketing Agent, the Bond Registrar, the Paying Agents, the Auction Agent, the Broker-Dealer and the Agency in accordance with the Indenture, (iii) all installment purchase payments and all other amounts payable hereunder, (iv) all amounts required to be rebated to the Federal government pursuant to the Tax Regulatory Agreement or the Indenture, (v) all amounts required to be paid under the Credit Provider Documents, (vi) all amounts required to be paid to the Agency, and (vii) all amounts required to be paid under any Security Document, shall be paid by the Trustee to or at the direction of the Credit Provider Agent as overpayment of installment purchase payments.

Section 6.11. Issuance of Additional Bonds. The Agency and the Company recognize that under the provisions of and subject to the conditions set forth in the Indenture, the Agency is authorized, with the consent of the Credit Provider Agent, to enter into a Supplemental Indenture and issue one or more series of Additional Bonds on a parity with the Series 2007 Bonds for the purpose of (i) completing the Project, (ii) providing funds in excess of the Net Proceeds of insurance or eminent domain to repair, relocate, replace, rebuild or restore the Facility in the event of damage, destruction or taking by eminent domain, (iii) providing extensions, additions or improvements to the Facility, or (iv) refunding Outstanding Bonds. If the Company is not in default hereunder, the Agency will consider the issuance of Additional Bonds in a principal amount as is specified in a written request in accordance with the applicable provisions set forth in the Indenture. If Additional Bonds are to be issued pursuant to the Indenture, the Agency and the Company shall enter into an amendment to this Agreement, providing, among other things, for the payment by the Company of such additional installment purchase payments as are necessary in order to amortize in full the principal of and interest on such Additional Bonds and any other costs in connection therewith.

Any such completion, repair, relocation, replacement, rebuilding, restoration, additions, extensions or improvements shall become a part of the Facility and shall be included under this Agreement to the same extent as if originally included hereunder.

Section 6.12. Employment Information, Opportunities and Guidelines.

(a) Annually, by August 1 of each year, commencing August 1, 2008, until the termination of this Agreement, the Company shall submit to the Agency a completed Employment and Benefits Report, in the form of Schedule B hereto. Upon the termination of this Agreement, the Company shall submit to the Agency a completed Employment and Benefits Report, in the form of Schedule B hereto, relating to the period commencing from the last such filed employment report through the end of the last payroll date of the preceding month.

(b) The Company shall ensure that all employees and applicants for employment by the Company or its Affiliates with regard to the Facility are afforded equal employment opportunities without discrimination. Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities created as a result of the Project shall be listed with the New York State Department of Labor Community Services Division, and with the administrative entity of the service delivery area created by the Workforce Investment Act of 1998 (P.L. No. 105-220) (the "Workforce Act") in which the Facility is located. Except as is otherwise provided by collective bargaining contracts or agreements, the Company agrees, where practicable, to first consider, and cause each of its Affiliates at the Facility to first consider, persons eligible to participate in the Workforce Act programs who shall be referred by administrative entities of service delivery areas created pursuant to such act or by the Community Services Division of the New York State Department of Labor for such new employment opportunities.

(c) The Company hereby authorizes any private or governmental entity, including but not limited to The New York State Department of Labor ("DOL"), to release to the Agency and/or the New York City Economic Development Corporation ("EDC"), and/or to the successors and assigns of either (collectively, the "Information Recipients"), any and all employment information under its control and pertinent to the Company and the employees of the Company to enable the Agency and/or EDC to comply with its reporting requirements, applicable laws, rules or regulations and to determine compliance of the Project with this Section. In addition, upon the Agency's request, the Company shall provide to the Agency any employment information in the possession of the Company which is pertinent to the Company and the employees of the Company to enable the Agency and/or EDC to comply with its reporting requirements under New York City Local Law 48 of 2005 and any other applicable laws, rules or regulations. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Company or any information previously released as provided by all or any of the foregoing parties (collectively, "Employment Information") may be disclosed by the Information Recipients in connection with the administration of the programs of the Agency, and/or EDC, and/or the successors and assigns of either, and/or the City, and/or as may be necessary to comply with law; and, without limiting the foregoing, the Employment Information may be included in (x) reports prepared by the Information Recipients pursuant to New York City Local Law 48 of 2005, (y) other reports required of the Agency, and (z) any other reports required by law. This authorization shall remain in effect throughout the term of this Agreement.

(d) Nothing in this Section shall be construed to require the Company to violate any existing collective bargaining agreement with respect to hiring new employees.

Section 6.13. Redemption Under Certain Circumstances; Special Covenants.

(a) Upon the determination by resolution of the members of the Agency that (x) the Company is operating the Facility or any portion thereof, or is allowing the Facility or any portion thereof to be operated, in violation of material applicable law or not as a qualified "project" in accordance with the Act and the failure of the Company within sixty (60) days (or such longer period as may be established pursuant to the proviso to this sentence) of the receipt by the Company of written notice of such noncompliance from the Agency to cure such noncompliance together with a copy of such resolution (a copy of which notice shall be sent to the Credit Provider Agent, the Recognized Mezzanine Lenders, the Recognized Mortgage Lenders and the Trustee), (y) that the Company or any Affiliate of the Company or any Principal of the Company or of any such Affiliate of the Company has committed a material violation of a material Legal Requirement and the failure of the Company after sixty (60) days (or such longer period as may be established pursuant to the proviso of this sentence) of the receipt by the Company of written notice of such determination from the Agency to cure such material violation (which cure, in the case of a Principal who shall have committed a material violation of a material Legal Requirement, may be effected by the permanent removal of such Principal), or (z) that any Conduct Representation is false, misleading or incorrect in any material respect as of the date made, the Company covenants and agrees that, in any of the circumstances described in clause (x), (y) or (z) above, it shall, on the immediately succeeding Interest Payment Date following the termination of such sixty (60) day (or longer) period in the case of clause (x) or (y) above, or on the immediately succeeding Interest Payment Date in the case of clause (z) above, cause the Trustee to draw on the Credit Enhancement in an amount sufficient to redeem the Bonds Outstanding in whole at the Redemption Price of 100% of the aggregate principal amount of the Outstanding Bonds together with interest accrued thereon to such Interest Payment Date, provided, however, that, in any one of clauses (x) or (y) above, if such noncompliance or material violation cannot be cured within such period of sixty (60) days with diligence (and is capable of being cured) and the applicable person promptly commences the curing of such non-compliance or material violation and thereafter prosecutes the curing thereof with diligence and to the Agency's reasonable satisfaction, such period of time within which the applicable person may cure such failure shall be extended for such additional period of time as may be necessary to cure the same with diligence and the Agency shall notify the Trustee and the Credit Provider Agent of any such extension. The Agency shall give prior written notice of the meeting at which the members of the Agency are to consider such resolution to the Company, the Credit Provider Agent and the Trustee, which notice shall be no less than sixty (60) days prior to such meeting.

(b) In the event (v) that the Company fails to obtain or maintain the public liability insurance with respect to the Facility required under Section 4.5 hereof, and the Company (or the Credit Provider Agent, a Recognized Mezzanine Lender or a Recognized Mortgage Lender, in each case on the Company's behalf) shall fail to cure such noncompliance within ten (10) days of the receipt by the Company of written notice of such noncompliance from the Agency and a demand by the Agency on the Company to cure such noncompliance (a copy of which notice and demand shall be simultaneously sent to the Credit Provider Agent, the Recognized Mezzanine Lenders and the Recognized Mortgage Lenders), (w) that prior to the Project Completion Date, a default shall occur under Section 6.1 (a)(vi) of this Agreement, and the Company shall fail within sixty (60) days of such default to cure the same, (x) that an Event

of Default shall occur and be continuing under Section 2.4(1), (5) or (6) of the Indemnity Guaranty Agreement, (y) that the Indemnitor shall default under a Material Indemnitor Covenant, which default shall continue for a period of thirty (30) days following the receipt by the Indemnitor and the Company of written notice of such default from the Agency, and the failure of the Indemnitor or the Company within such thirty (30) day period to either cure such default or provide additional collateral satisfactory to the Agency in the Agency's sole and absolute unlimited discretion, relative to the Guaranteed Obligations as shall be the subject of the Indemnity Guaranty Agreement (to the extent that additional or alternate collateral satisfactory to the Agency shall be so posted, the Bonds shall not yet have been redeemed in whole nor notice of such redemption delivered to the Holders of the Bonds, and the default under the Material Indemnitor Covenant shall have been cured or waived by the Agency, then any such additional or alternate collateral shall be returned by the Agency to the Person as shall have provided the same), or (z) that, within sixty (60) days following the death of Joseph Moinian, either (1) the estate of Joseph Moinian (the "Indemnitor's Estate") shall not have, by written instrument satisfactory in form and substance to the Agency (in the Agency's sole and absolute unlimited discretion), assumed all obligations of Joseph Moinian under the Indemnity Guaranty Agreement or not established to the Agency's satisfaction (which shall be in the Agency's sole and absolute unlimited discretion and which may require the delivery to the Agency of opinions of counsel or of an independent certified public accountant or firm of independent certified public accountants) that the Indemnity Guaranty Agreement constitutes the legal, valid and binding enforceable obligation of the Indemnitor's Estate, or that the Indemnitor's Estate is in compliance with the Material Indemnitor Covenants, or that the Indemnitor's Estate has reserved \$150,000,000 in assets in satisfaction for the contingent payment of the Guaranteed Obligations, or (2) the Company shall not have provided additional or alternate collateral satisfactory to the Agency in the Agency's sole and absolute unlimited discretion relative to the Guaranteed Obligations as shall be the subject of the Indemnity Guaranty Agreement, then, in any one of clauses (v), (w), (x), (y) or (z) above, upon notice or waiver of notice as provided in the Indenture, the Company shall cause the Bonds to be redeemed in whole, on the next Interest Payment Date, by directing the Trustee to draw on the Credit Enhancement, in an amount sufficient to redeem all Bonds then Outstanding at the Redemption Price of one hundred percent (100%) of the unpaid principal amount of the Bonds, together with interest accrued thereon to the date of redemption.

(c) Upon the circumstances set forth in Sections 2.09(b), (d), (e), (f) and (g) of the Indenture, the Company shall pay or cause the prepayment of its installment purchase payment obligation with respect to the Bonds upon the circumstances and in the manner set forth in the Indenture.

Section 6.14. Further Assurances. The Company will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, including Uniform Commercial Code financing statements, at the sole cost and expense of the Company, as the Agency, the Credit Provider Agent or the Trustee deems reasonably necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and any rights of the Agency, the Credit Provider Agent or the Trustee hereunder, under the Indenture or under any other Security Document.

Section 6.15. Recording and Filing. The Agency shall cause this Agreement, as originally executed, to be recorded (at the sole cost and expense of the Company) subsequent to

the recordation of the Development Security Documents, the Indenture and the IDA Lease, in the appropriate offices of the Register of The City of New York, or in such other offices as may at the time be provided by law as the proper place for the recordation thereof. In addition, the security interest granted by the Agency to the Trustee and the Credit Provider Agent pursuant to the Indenture in the rights and other intangible interests described therein, shall be perfected by the filing of a financing statement at the direction of the Agency (at the sole cost and expense of the Company) in the office of the Secretary of State of the State in the City of Albany, New York, which financing statement shall be in accordance with the New York State Uniform Commercial Code-Secured Transactions.

The Agency and the Company acknowledge that, as of the Closing Date,

(1) Section 9-515 of the New York State Uniform Commercial Code-Secured Transactions provides that an initial financing statement filed in connection with a “public-financed transaction” is effective for a period of 30 years after the date of filing if such initial financing statement indicates that it is filed in connection with a public financed transaction,

(2) Section 9-102(67) of the New York State Uniform Commercial Code-Secured Transactions defines a public-finance transaction as a secured transaction in connection with which, in substance, (x) bonds are issued, (y) all or a portion of the bonds have an initial stated maturity of at least 20 years, and (z) the debtor, obligor, secured party or assignee with respect to the collateral or secured obligation is a governmental unit of a state, and

(3) subject to any future change in law, the initial financing statement as shall be filed with respect to the security interest described above shall therefore have an effective period of thirty (30) years after the date of filing, for the purpose of determining the date by which continuation statements shall be filed.

The parties hereto acknowledge and agree that, because the foregoing financing statements evidence collateral for the Bonds, and because the Bonds are municipal securities with a term that is at least 20 years in duration from the Closing Date, there is no need under the Uniform Commercial Code of the State of New York to re-file such financing statement in order to preserve the liens and security interests that they create, for the period commencing with the Closing Date and terminating on the thirtieth anniversary of the Closing Date.

Subsequent to the foregoing recordation and filing, if in the Opinion of Counsel to the Company (described hereinbelow), to preserve (after the thirtieth (30th) anniversary of the Closing Date) the lien and security interest of the Indenture, it is necessary to re-record and/or re-index documents, re-file financing statements and/or file continuation statements and/or take any other actions (individually or collectively, the “Continuation Action(s)”), then, the Company in a timely manner shall: (A) as applicable, (i) prepare and deliver to the Trustee all necessary instruments and filing papers, together with remittances equal to the cost of required filing fees and other charges, so that the Trustee may perform the Continuation Actions, or (ii) electronically perform the Continuation Actions and deliver to the Trustee written certification (upon which the Trustee may conclusively rely) that such performance has occurred, specifying the Continuation Actions performed, or (iii) perform some of the Continuation

Actions in the manner described in clause “(i)” and the others in the manner described in clause “(ii)” and (B) deliver or cause to be delivered to the Agency, the Credit Provider Agent and the Trustee the Opinion of Counsel to the Company. The Trustee may conclusively rely upon (y) when applicable, the certification referred to in clause “(A)(ii),” and (z) in all instances, the Opinion of Counsel to the Company. In the event the Company chooses to have the Trustee perform all or some of the Continuation Actions, as provided in clause “(A)(i)” hereinabove, the Trustee shall reasonably promptly perform such Continuation Actions at the Company’s sole expense. The Company shall perform the obligations described hereinabove in clauses “(A)” and “(B)” no later than ten (10) days prior to (i)(y) the thirtieth (30th) anniversary of the Closing Date, and (z) each fifth (5th) anniversary thereafter, and/or (ii) the date (not covered by clause “(i)” on which a Continuation Action is to be taken to preserve the lien and security interest of the Indenture.

The Opinion of Counsel to the Company shall be addressed to the Company, the Agency, the Credit Provider Agent and the Trustee. Counsel shall deliver successive Opinions of Counsel in respect of (i)(y) the thirtieth (30th) anniversary of the Closing Date, and (z) every five-year period thereafter through the term of the Bonds, and/or (ii) the date of any required Continuation Action not covered by clause “(i),” in each case not later than fifteen (15) days prior to the date on which a Continuation Action is required to be taken. In the Opinion of Counsel to the Company, counsel shall opine as to: (i) what Continuation Actions are necessary; and (ii) the deadline dates for the required Continuation Actions; and (iii) the jurisdictions in which the Continuation Actions must be effected. Counsel in such opinion shall additionally opine that, upon performance of the Continuation Actions by, as the case may be, (i) the Trustee with instruments and papers prepared by the Company, or (ii) the Company through electronic filing, or (iii) the Trustee as to some Continuation Actions, and the Company as to the others through electronic filings, all appropriate steps shall have been taken on the part of the Company, the Agency, the Credit Provider Agent and the Trustee then requisite to the maintenance of the perfection of the security interest of the Trustee and the Credit Provider in and to all property and interests which by the terms of the Indenture are to be subjected to the lien and security interest of the Indenture.

Any filings with respect to Uniform Commercial Code financing statements may be made electronically and the Agency shall have the right to designate a company (which shall be reasonably acceptable to the Trustee and the Credit Provider Agent) to facilitate the filing of Uniform Commercial Code financing statements.

The Company acknowledges and agrees that neither the Agency nor the Trustee nor the Credit Provider Agent nor any of their respective directors, members, officers, employees, servants, agents, persons under its control or supervision or attorneys (including Bond Counsel to the Agency), shall have any responsibility or liability whatsoever related in any way to the filing or re-filing of any Uniform Commercial Code financing statements or continuation statements, or the perfection or continuation of perfection of any security interests, or the recording or rerecording of any document, or the failure to effect any act referred to in this Section, or the failure to effect any such act in all appropriate filing or recording offices, or the failure of sufficiency of any such act so effected.

All costs (including reasonable attorneys' fees and expenses) incurred in connection with the effecting of the requirements specified in this Section shall be paid by the Company.

The Company agrees to perform all other acts (including the payment of all reasonable fees and expenses) necessary in order to enable the Agency and the Trustee to comply with this Section and with Section 7.08 of the Indenture, including but not limited to, providing prompt notice to the Trustee and the Credit Provider Agent of any change in the Company's name or address. The Company agrees that the Agency, the Trustee and the Credit Provider Agent, if permitted by applicable law, may provide for the re-recording of the Indenture or any other Security Document or the filing or re-filing of continuation statements without the cooperation of the Company as necessary at the Company's sole cost and expense.

Neither the Series 2007 Bonds, nor the obligations of the Company under any of the Security Documents, are secured by any mortgage lien or on security interest in the Facility.

Section 6.16. Right to Cure Agency Defaults. The Agency hereby grants the Company full authority for account of the Agency to perform any covenant or obligation the non-performance of which is alleged to constitute a default in any notice received by the Company, in the name and stead of the Agency, with full power of substitution.

Section 6.17. Obligations under and Covenants with Respect to the Condominium Documents. No later than the closing of the first sale by the Company of a residential condominium unit within the Development, the Company covenants and agrees, subject to the Agency Protection Protocol, to subject the Development to a condominium regime under the Condominium Act and to create thereunder a single condominium unit with respect to the Facility and the Excluded Premises to be named the "Hotel Unit" and to be comprised solely of that property as constituted the Facility and the Excluded Premises prior to the Condominium Conversion Effective Date, other than the Common Elements as shall directly relate to the "Hotel Unit." The Company covenants and agrees that, during the term of this Agreement, it shall (i) not enter into, consent, permit or approve an amendment, supplement or modification to any of the Condominium Documents which would (x) be prohibited by the terms of any of the Project Documents, (y) adversely affect the Agency, including violating the Agency Protection Protocol, without the prior written consent of the Agency, or (z) materially adversely affect the security for the Bonds or the security for the obligations owed by the Company under the Security Documents and the Credit Provider Documents, without the prior written consent of the Agency, the Trustee and the Credit Provider Agent, (ii) pay all costs, fees, charges and expenses required of it when due under any of the Condominium Documents, and (iii) not dissolve the Condominium regime without the prior written consents of the Agency and the Credit Provider Agent.

Section 6.18. Certain Income and Expense Statements. For so long as this Agreement and the Condominium regime is in effect, and to the extent that Section 11-208.1 of the Administrative Code of The City of New York (or successor provision thereto) is from time to time in force and effect and the Company is required to comply therewith, the Company shall, if applicable, prepare and submit income and expense statements of the type required by such Section 11-208.1 (or such successor provision) as the "owner" of the Hotel Unit comprising the

Facility, such statements to be submitted within the time periods and to the address provided in such Section 11-08.1.

Section 6.19. Signage at Facility Site. Upon commencement of construction of the Facility (including but not limited to the commencement of any demolition and/or excavation), with any proceeds of the Bonds, the Company shall erect on the Facility, at its own cost and expense, within easy view of passing pedestrians and motorists, a large and readable sign with the following information upon it (hereinafter, the "Sign"):

**FINANCIAL ASSISTANCE PROVIDED
THROUGH THE
NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY
Mayor Michael Bloomberg**

In addition, the Sign shall satisfy the following requirements: (i) format and appearance generally shall be stipulated by the Agency in writing or electronically; and (ii) the minimum size of the sign shall be four feet by eight feet; and (iii) the Sign shall have no other imprint upon it other than that of the Agency. The Sign shall remain in place at the Facility until the Project Completion Date. The Company may erect other signs in addition to the Sign.

Section 6.20. Covenant to Notify Agency Upon Death of Joseph Moinian. The Company covenants to deliver prompt written notice to the Agency of the death of Joseph Moinian.

Section 6.21. Certain Continuing Representations. If at any time during the term of this Agreement, the representation or warranty made by the Company pursuant to Section 1.5(bb) hereof would, if made on any date during the term of this Agreement and deemed made as of such date, be false, misleading or incorrect in any material respect, then, the Company shall be deemed to be in default under this Agreement unless the Agency shall, upon written request by the Company, either waive such default in writing or consent in writing to an exception to such representation or warranty so that such representation or warranty shall no longer be false, misleading or incorrect in a material respect.

Section 6.22. Notification as to Changes in Ownership. The Company represents and warrants that, as of the Closing Date, the "Company Ownership Structure" attached to and made a part of the Appendices to this Agreement is accurate and complete, and covenants and warrants to promptly deliver notice to the Agency, the Trustee and the Credit Provider Agent of (x) any changes to the ownership or to members which would make the "Company Ownership Structure" as so attached no longer accurate and complete, (y) any Mezzanine Financing (excluding that described in the recitals to this Agreement), or (z) any Permitted Transfers. Upon request by the Agency, the Trustee or the Credit Provider Agent, the Company shall provide details of any such action so described in this Section 6.22 to the Agency, the Trustee and the Credit Provider Agent.

Section 6.23. Recognized Mezzanine Lenders; Recognized Mortgage Lenders.
(a) Pursuant to Section 1.5(dd) hereof, the Company has represented and warranted to the Agency, to the best of the Company's knowledge, the names and notice addresses of each

Mezzanine Lender with respect to each Mezzanine Financing in effect as of the Closing Date. The Company shall direct each Mezzanine Lender to deliver to the Agency and the Trustee a written notice setting forth that such Person is a Mezzanine Lender and stating the address to which such Person desires that notices from the Agency and/or the Trustee be delivered (the "Recognized Mezzanine Lender Notification"). The Agency and the Trustee agree, for the benefit of each Recognized Mezzanine Lender, to use their best efforts (y) to deliver to each Recognized Mezzanine Lender copies of any notices of default or Event of Default delivered to the Company under any Security Document at the notice address so stated in the most recent Recognized Mezzanine Lender Notification delivered to the Agency or the Trustee, respectively, and (z) not to enter into any amendment, modification or supplement to a Security Document without obtaining the prior written consent of each Recognized Mezzanine Lender (in addition to any other consents required under the Security Documents); provided, however, that (i) the Agency and the Trustee may conclusively rely upon the most recent Recognized Mezzanine Lender Notification available to them in their records as to the identity and notice address of any Mezzanine Lender, and (ii) no failure by the Agency or the Trustee to comply with its covenants or agreements set forth in this Section 6.23(a) shall constitute an Event of Default under any of the Security Documents nor result in any liability, financial or otherwise, of the Agency or the Trustee to any Mezzanine Lender, the Company or any other Person. The Credit Provider Agent shall not be deemed an agent of, or fiduciary for, any Mezzanine Lender.

(b) Pursuant to Section 1.5(ee) hereof, the Company has represented and warranted to the Agency, to the best of the Company's knowledge, the names and notice addresses of each Mortgage Lender with respect to each Mortgage Financing in effect as of the Closing Date. The Company shall direct each Mortgage Lender to deliver to the Agency and the Trustee a written notice setting forth that such Person is a Mortgage Lender and stating the address to which such Person desires that notices from the Agency and/or the Trustee be delivered (the "Recognized Mortgage Lender Notification"). The Agency and the Trustee agree, for the benefit of each Recognized Mortgage Lender, to use their best efforts (y) to deliver to each Recognized Mortgage Lender copies of any notices of default or Event of Default delivered to the Company under any Security Document at the notice address so stated in the most recent Recognized Mortgage Lender Notification delivered to the Agency or the Trustee, respectively, and (z) not to enter into any amendment, modification or supplement to a Security Document without obtaining the prior written consent of each Recognized Mortgage Lender (in addition to any other consents required under the Security Documents); provided, however, that (i) the Agency and the Trustee may conclusively rely upon the most recent Recognized Mortgage Lender Notification available to them in their records as to the identity and notice address of any Mortgage Lender, and (ii) no failure by the Agency or the Trustee to comply with its covenants or agreements set forth in this Section 6.23(b) shall constitute an Event of Default under any of the Security Documents nor result in any liability, financial or otherwise, of the Agency or the Trustee to any Mortgage Lender, the Company or any other Person.

Section 6.24. Consents of Credit Provider Agent. In the event a consent of the Credit Provider Agent shall be required under any provision of this Agreement as to a matter for which the consent of the Credit Provider Agent is not required under the related Reimbursement Agreement or other Credit Provider Documents, then, as between the Company and the Credit Provider Agent, the provisions of the related Reimbursement Agreement or other Credit Provider Documents shall govern as to whether any such consent of the Credit Provider Agent must be obtained. The Agency and the Trustee can conclusively rely upon a certificate of an

authorized representative of the Credit Provider Agent as to whether the consent of the Credit Provider Agent must be obtained.

Section 6.25. Cure by Recognized Mezzanine Lenders, Recognized Mortgage Lenders or the Credit Provider Agent. In the event of a default by the Company under this Agreement, the Agency and the Trustee agree to accept payment or performance by a Recognized Mezzanine Lender, by a Recognized Mortgage Lender or by the Credit Provider Agent, as payment or performance by the Company; provided, however that nothing herein contained in this Section 6.25 shall be deemed to extend any grace period provided to the Company in this Agreement.

ARTICLE VII

Events of Default; Remedies

Section 7.1. Events of Default. Any one or more of the following events shall constitute an "Event of Default" hereunder:

(a) Failure of the Company to pay any installment purchase payment that has become due and payable by the terms of Section 3.3 or 3.5 hereof which results in an Event of Default under the Indenture;

(b) Failure of the Company to pay any amount (except the obligation to pay installment purchase payments under Sections 3.3 and 3.5 hereof) that has become due and payable or to observe and perform any covenant, condition or agreement on its part to be performed under Section 4.4 or 4.5 hereof, and continuance of any such failure for a period of thirty (30) days after receipt by the Company of written notice specifying the nature of such default from the Agency, the Credit Provider Agent, the Trustee or the Holders of more than twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding;

(c) Failure of the Company to observe and perform any covenant, condition or agreement hereunder on its part to be performed (except as set forth in Section 7.1(a), (b), (f), (g) or (h) hereof) and (1) continuance of such failure for a period of thirty (30) days after receipt by the Company of written notice specifying the nature of such default from the Agency, the Credit Provider Agent, the Trustee or the Holders of more than twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding, or (2) if by reason of the nature of such default the same can be remedied, but not within the said thirty (30) days, the Company fails to proceed with reasonable diligence after receipt of said notice to cure the same;

(d) The Company shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Credit bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) take any action for the purpose of effecting any of the foregoing, or (vii) be adjudicated a bankrupt or insolvent by any court;

(e) A proceeding or case shall be commenced, without the application or consent of the Company, in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Company or of all or any substantial part of its assets, (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing against the Company shall be entered and continue unstayed and in effect, for a period of ninety (90) days, or (iv) the Company shall fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary

case under such Bankruptcy Code; the terms “dissolution” or “liquidation” of the Company as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 hereof;

(f) The rendering of a judgment by a court or other governmental body of competent jurisdiction to foreclose any mortgage encumbering the Facility;

(g) Any representation or warranty made (i) by or on behalf of the Company in the application, commitment letter and related materials submitted to the Agency for approval of the Project, or (ii) by or on behalf of the Company herein or in any of the other Security Documents, or (iii) by or on behalf of the Company or the Indemnitor in the Letter of Representation and Indemnity Agreement, or (iv) by or on behalf of the Company or any other Person in any Required Disclosure Statement, or (v) by or on behalf of the Company in the Tax Regulatory Agreement, or (vi) by or on behalf of the Company or the Indemnitor in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall in any case prove to be false, misleading or incorrect in any material respect as of the date made (the “Misleading Statement”); unless (1) the Company discloses the same to the Agency and the Trustee in writing if the Company or the Indemnitor becomes aware of such Misleading Statement; (2) such Misleading Statement was not intentional, (3) if such Misleading Statement is curable (e.g., the Company or the Indemnitor can make a true and non-misleading warranty or representation), the Company diligently commences a cure within thirty (30) days of becoming aware of such Misleading Statement and cures same within one hundred twenty (120) days of becoming aware of same, unless, after written request by the Company, the Agency and the Trustee waive such requirement, and (4) neither the Agency, the Trustee nor the Bondholders will suffer any material adverse effect because of such Misleading Statement, as determined by the Agency and the Trustee in their sole discretion, and no other material adverse effect upon the Agency or the Trustee or the security for the Bonds occurs during such cure period as determined by the Agency and the Trustee in their sole discretion, and the facts or circumstances as actually exist do not themselves constitute an Event of Default under the other provisions of this Section 7.1; or

(h) An “Event of Default” under the Indenture or under any other Security Document shall occur and be continuing.

Section 7.2. Remedies on Default. Whenever any Event of Default referred to in Section 7.1 hereof shall have occurred and be continuing, the Agency, or the Trustee or the Credit Provider where so provided, may, take any one or more of the following remedial steps:

(a) The Trustee, as and to the extent provided in Article VIII of the Indenture, may cause all principal installments of installment purchase payments payable under Section 3.3 hereof for the remainder of the term of this Agreement to be immediately due and payable, whereupon the same, together with the accrued interest thereon, shall become immediately due and payable;

(b) The Agency, with the prior written consent of the Trustee and the Credit Provider Agent, the Credit Provider Agent, or the Trustee (with the prior written consent of the Credit Provider Agent), may terminate this Agreement, in which case this Agreement and all of the estate, right, title and interest herein granted or vested in the Company shall cease and

terminate. No such termination of this Agreement shall relieve the Company of its liability and obligations hereunder and such liability and obligations shall survive any such termination;

(c) Each of the Agency, the Credit Provider Agent and the Trustee may take whatever action at law or in equity as may appear necessary or desirable to collect the installment purchase payments then due and thereafter to become due, or to enforce performance or observance of any obligations, agreements or covenants of the Company under this Agreement;

(d) The Trustee may take any action permitted under the Indenture with respect to an Event of Default thereunder; and

(e) The Agency, without the consent of the Trustee, the Credit Provider Agent, any Bondholder or any Person, may proceed to enforce the Agency's Reserved Rights by bringing an action for damages, injunction or specific performance.

In the event that the Company fails to make any installment purchase payment required in Section 3.3 or 3.5 hereof, the installment so in default shall continue as an obligation of the Company until the amount in default shall have been fully paid.

No action taken pursuant to this Section (including termination of this Agreement pursuant to this Section or by operation of law or otherwise) shall, except as expressly provided herein, relieve the Company from the Company's obligations hereunder, all of which shall survive any such action.

The Company and the Agency hereby acknowledge that, pursuant to Article VIII of the Indenture, the Credit Provider Agent has the right to direct the remedial action undertaken by the Trustee and that the Trustee, in enforcing its rights pursuant to this Section, may be acting at the direction of the Credit Provider Agent.

Section 7.3. Remedies Cumulative. The rights and remedies of the Agency, the Trustee or the Credit Provider Agent under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency, the Trustee or the Credit Provider Agent allowed by law with respect to any default under this Agreement. Failure by the Agency, the Trustee or the Credit Provider Agent to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the Company hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandatory injunction, specific performance or other appropriate legal remedy a strict compliance by the Company with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the Company be continued or repeated.

Section 7.4. No Additional Waiver Implied by One Waiver. In the event any covenant or agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between the Agency and/or the Trustee and/or the Credit Provider Agent and the Company or

any delay or omission on the part of the Agency and/or the Trustee and/or the Credit Provider Agent in exercising any rights hereunder or under the Indenture or under any other Security Document shall operate as a waiver.

Section 7.5. Effect on Discontinuance of Proceedings. In case any proceeding taken by the Trustee or the Credit Provider Agent under the Indenture or this Agreement or under any other Security Document on account of any Event of Default hereunder or under the Indenture shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or the Credit Provider Agent, then, and in every such case, the Agency, the Trustee, the Credit Provider Agent and the Holders of the Bonds shall be restored, respectively, to their former positions and rights hereunder and thereunder, and all rights, remedies, powers and duties of the Trustee and the Credit Provider Agent shall continue as in effect prior to the commencement of such proceedings.

Section 7.6. Agreement to Pay Attorneys' Fees and Expenses. In the event the Agency, the Trustee or the Credit Provider Agent should employ attorneys or incur other expenses for the collection of installment purchase payments or other amounts payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained or contained in any other Security Document, the Company agrees that it will on demand therefor pay to the Agency, the Trustee, or the Credit Provider Agent the fees and disbursements of such attorneys and such other expenses so incurred during the occurrence of such Event of Default.

Section 7.7. Rights of Credit Provider Agent. Notwithstanding anything to the contrary contained herein, and subject to the provisions and limitations of Section 7.10 of the Indenture, neither the Trustee nor the Agency shall (i) take any actions to accelerate the Series 2007 Bonds (except to the extent of redemptions of the Series 2007 Bonds pursuant to Section 6.13(a) or (b) hereof or pursuant to Section 2.09(b), (d), (e), (f) or (g) of the Indenture), nor (ii) foreclose, release, relet, take possession of or otherwise dispose of any collateral covered by the Security Documents, except with the prior written consent of the Credit Provider Agent; provided, however, the Agency's rights under Section 7.2(e) hereof shall not be subject to the consent of the Credit Provider Agent.

ARTICLE VIII

Options

Section 8.1. Options. (a) The Company has the option to make advance installment purchase payments for deposit in the Installment Purchase Payments Fund to effect the retirement of the Bonds in whole or the redemption in whole or in part of the Bonds through directing the Trustee to make a draw under the Credit Enhancement, all in accordance with the terms of the Indenture; provided, however, that no partial redemption of the Bonds may be effected through advance installment purchase payments hereunder if there shall exist and be continuing an Event of Default. The Company shall exercise such option by delivering a written notice of an Authorized Representative of the Company to the Trustee in accordance with the Indenture, with a copy to the Agency and the Credit Provider Agent, setting forth (i) the principal amount of Bonds Outstanding requested to be redeemed (which principal amount shall be in such minimum Authorized Denomination or integral multiple of such Authorized Denomination as shall be permitted in the Indenture), and (ii) the date on which such principal amount of Bonds are to be redeemed. Such advance installment purchase payment shall be paid to the Trustee in legal tender through a draw by the Trustee on the Credit Enhancement on or before the Redemption Date and shall be an amount which, when added to the Priority Amounts on deposit in the Bond Fund and available therefor (and in the Project Fund in the event of any redemption in whole), will be sufficient to pay the Redemption Price of the Bonds to be redeemed, together with interest to accrue to the date of redemption, and for the Company to pay all expenses of the Agency, the Bond Registrar, the Tender Agent, the Remarketing Agent, the Trustee, the Credit Provider Agent, the Liquidity Provider Agent, the Auction Agent, the Broker-Dealer and the Paying Agents in connection with such redemption; provided, however, no such redemption of the Bonds shall be effected except from Priority Amounts. The Company hereby authorizes and directs the Trustee to draw moneys under the Credit Enhancement in an amount sufficient to redeem the principal amount of Series 2007 Bonds requested to be redeemed, together with interest accrued and to accrue thereon to the date of redemption. In the event the Bonds are to be redeemed in whole or otherwise retired, the Company shall further pay on or before such redemption date, in legal tender, to the Agency, the Trustee, the Credit Provider Agent, the Tender Agent, the Remarketing Agent, the Bond Registrar, the Liquidity Provider Agent, the Auction Agent, the Broker-Dealer and the Paying Agents, as the case may be, all fees and expenses owed such party or any other party entitled thereto under this Agreement or the Indenture together with (i) all other amounts due and payable under this Agreement and the other Security Documents, (ii) any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement, and (iii) any amounts required to be paid to the Credit Provider Agent under the Credit Provider Documents.

(b) The Company shall have the option to terminate this Agreement commencing on that date upon which the Bonds may first optionally be redeemed in whole and on any date thereafter permitted therefor as provided in the Indenture.

(c) As a condition precedent to the termination of this Agreement, pursuant to Section 8.1(b) hereof, the Company shall cause to be paid, through causing a draw by the Trustee under the Credit Enhancement, in legal tender, advance installment purchase payments (if payment in full of the principal of or the Redemption Price, if any, as the case may be, of, and

interest on, all the Outstanding Bonds, and the interest thereon at maturity or upon earlier redemption has not yet been made) equal to the sum of the following:

(1) an amount which, when added to the Priority Amounts on deposit in the Bond Fund and available therefor, will be sufficient to pay, retire and redeem the Outstanding Bonds in accordance with the provisions of the Indenture, including, without limitation, the principal of or the Redemption Price (as the case may be) of, together with interest to maturity or Redemption Date (as the case may be) on, the Outstanding Bonds;

(2) expenses of redemption, the fees and expenses of the Agency, the Trustee, the Credit Provider Agent, the Liquidity Provider Agent, the Auction Agent, the Broker-Dealer, the Tender Agent, the Remarketing Agreement, the Bond Registrar and the Paying Agents and all other amounts due and payable hereunder, under the Credit Provider Documents and under the other Security Documents;

(3) any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement; and

(4) one dollar.

The Company hereby authorizes and directs the Trustee to draw moneys under the Credit Enhancement in an amount sufficient to pay the principal of and interest on the Series 2007 Bonds to maturity or the Redemption Date, as the case may be.

(d) Upon the payment in full of the principal of and interest on the Outstanding Bonds (whether at maturity or earlier redemption) or termination of this Agreement, the Company shall be required to exercise its option above-stated by (1) delivering to the Agency prior written notice of an Authorized Representative of the Company no more than thirty (30) days after the payment in full of the Bonds of the exercise of such option, which notice shall set forth a requested closing date which shall be not later than sixty (60) days after the payment in full of the Bonds, and (2) paying on such closing date an amount equal to the sum of one dollar, the fees and expenses of the Agency, the Trustee, the Credit Provider Agent, the Liquidity Provider Agent, the Auction Agent, the Broker-Dealer, the Tender Agent, the Remarketing Agent, the Bond Registrar and the Paying Agents and all other amounts due and payable under this Agreement and each other Security Document, together with any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement, and any amounts payable to the Credit Provider Agent under the Credit Provider Document. Upon the written request of the Company, the Agency may approve the extension or waiver of any of the time periods set forth in this paragraph.

(e) The Company shall not, at any time, assign or transfer its option as contained in this Section separate and apart from a permitted assignment of this Agreement pursuant to Section 9.3 hereof without the prior written consent of the Agency, the Credit Provider Agent and the Trustee.

Section 8.2. Termination on Exercise of Option to Terminate. Upon termination of this Agreement in accordance with Section 8.1 hereof, the Agency will, upon payment of the consideration payable in accordance with Section 8.1(c) hereof, deliver or cause to be delivered,

at the sole cost and expense of the Company, to the Company a termination of this Agreement in recordable form. Concurrently with the delivery of such termination, there shall be delivered by the Agency, at the sole cost and expense of the Company, to the Trustee any instructions or other instruments required by Section 10.01 of the Indenture to defease and pay the Outstanding Bonds.

Section 8.3. Option to Purchase or Invite Tenders of Bonds. The Company shall have the option, at any time during the term of this Agreement, to purchase Bonds for its own account, whether by direct negotiation, through a broker or dealer, or by making a tender offer to the Holders thereof. The Bonds so purchased (other than Liquidity Provider Bonds) by the Company or by any Affiliate of the Company shall be delivered to the Trustee for cancellation within thirty (30) days of the date of purchase unless the Company shall deliver to the Trustee an Opinion of Bond Counsel addressed to the Agency, the Credit Provider Agent and the Trustee to the effect that the failure to surrender such Bonds by such date will not affect the exclusion of the interest on any Bonds then Outstanding from gross income for federal income tax purposes. The Agency shall at all reasonable times make available or cause to be made available to the Company, upon reasonable notice to the Trustee, its registration books (maintained at the principal corporate trust office of the Trustee) containing the names and addresses of the Bondholders if known.

Section 8.4. Termination of Agreement. After full payment of the Bonds or provision for the payment in full thereof having been made in accordance with Section 10.01 of the Indenture, the Company shall terminate this Agreement by paying the fees and expenses of the Agency, the Trustee, the Credit Provider, the Credit Provider Agent, the Liquidity Provider, the Liquidity Provider Agent, the Auction Agent, the Broker-Dealer, the Bond Registrar, the Tender Agent, the Remarketing Agent and the Paying Agents and all other amounts due and payable under this Agreement and the other Security Documents, together with any amounts required to be rebated by the Company to the federal government pursuant to the Indenture or the Tax Regulatory Agreement, and by giving the Agency notice in writing of such termination and thereupon such termination shall forthwith become effective, subject, however, to the survival of the obligations of the Company under Sections 6.2 and 9.17 hereof. Notwithstanding any other provision of this Agreement to the contrary, upon the later of the full payment of the Bonds or provision for the payment in full thereof having been made in accordance with Section 10.01 of the Indenture, and upon receipt of forty-five (45) days prior written notice of the Agency requesting termination, the Company shall terminate this Agreement by paying the fees and expenses (including counsel fees and expenses) of the Agency, the Trustee, the Credit Provider, the Credit Provider Agent, the Liquidity Provider, the Liquidity Provider Agent, the Auction Agent, the Broker-Dealer, the Bond Registrar, the Tender Agent, the Remarketing Agent and the Paying Agents and all other amounts due and payable under this Agreement and the other Security Documents, together with any amounts required to be rebated by the Company to the federal government pursuant to the Indenture or the Tax Regulatory Agreement, and thereupon such termination shall forthwith become effective, subject, however, to the survival of the obligations of the Company under Sections 6.2 and 9.17 hereof. In the event the Company does not terminate this Agreement within such 45 day period, then, commencing on the 46th day after transmittal of the notice requesting termination as above provided, the Company shall, in addition to all other payment obligations due to the Agency hereunder, make payments to the Agency in the amount of \$500.00 per day until the Company shall terminate this Agreement in accordance with the provisions hereof.

ARTICLE IX

Miscellaneous

Section 9.1. Indenture; Amendment. The Company shall have and may exercise all the rights, powers and authority stated to be in the Company in the Indenture and in the Bonds, and the Indenture and the Bonds shall not be modified, altered or amended in any manner which adversely affects such rights, powers and authority so stated to be in the Company or otherwise adversely affects the Company without the written consent of the Company.

Section 9.2. Force Majeure. In case by reason of force majeure either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then except as otherwise expressly provided in this Agreement, if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice (other than the obligations of the Company to make the installment purchase payments or other payments required under the terms hereof, or to comply with Section 4.5 or 6.2 hereof), so far as they are affected by such force majeure, shall be suspended during the continuance of the inability then claimed which shall include a reasonable time for the removal of the effect thereof, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure", as employed herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State or any civil or military authority, insurrections, riots, epidemics, landslides, tornadoes, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrest, restraining of government and people, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other similar or different cause not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of existing or impending strikes, lockouts or other industrial disturbances shall be entirely within the discretion of the party having the difficulty and that the above requirements that any force majeure shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be deemed to be fulfilled even though such existing or impending strikes, lockouts and other industrial disturbances may not be settled but could have been settled by acceding to the demands of the opposing person or persons.

Section 9.3. Assignment and Sublease. (a) The Company shall not at any time assign or transfer this Agreement, or sublet all or any part of the Facility (other than to the Agency pursuant to the IDA Lease) prior to the Project Completion Date. After the Project Completion Date, and subject to the satisfaction of the same conditions set forth in Section 6.1(b) and (c) hereof, the Company shall not at any time assign or transfer this Agreement, nor sublet all or substantially all of the Facility, unless:

(1) any assignee or transferee of the Company, or sublessee of all or substantially all of the Facility (a "Sublessee Owner"), (A) is solvent and subject to service of process in the State and organized under the laws of the State or any other state, (B) is qualified to do business and in good standing in the State, and (C) assumes in writing all of the obligations of the Company contained in this Agreement, in all other Security Documents and in all the Project Documents to which the Company shall be a

party, and in the Opinion of Counsel delivered to the Agency, the Credit Provider Agent and the Trustee (x) such entity shall be bound by all of the terms applicable to the Company in this Agreement, in all other Security Documents and in all the Project Documents to which the predecessor Company shall have been a party, and (y) such action does not legally impair the security afforded by the Security Documents;

(2) such assignee, transferee or Sublessee Owner shall be an Approved Transferee;

(3) the Company delivers to the Agency, the Credit Provider Agent and the Trustee an Opinion of Bond Counsel to the effect that such assignment, transfer or sublease will not adversely affect the validity of the Bonds, or affect the excludability of interest on the Bonds from gross income under the Code;

(4) such assignment, transfer or sublease shall be in accordance with the provisions of the Act and shall not impair or limit in any material respect the obligations of any obligor under any Project Document;

(5) any such assignee, transferee or Sublessee Owner shall deliver to the Agency the Required Disclosure Statement in form and substance satisfactory to the Agency, provided that if any modification to the form of such Required Disclosure Statement is not acceptable to the Agency acting in its sole discretion, then the Company shall be in default under this Agreement;

(6) any such assignee, transferee or Sublessee Owner shall utilize the Facility as a qualified "project" within the meaning of the Act and shall be an Approved Transferee throughout the remainder of the term of this Agreement; and

(7) such assignment, transfer or sublease shall be permitted pursuant to the terms of the other Security Documents and the Project Documents.

The Company shall furnish or cause to be furnished to the Agency, the Credit Provider Agent and the Trustee a copy of any such assignment, transfer or sublease in substantially final form at least thirty (30) days prior to the date of execution thereof.

(b) The Company shall not sublease the Facility in part (except if substantially all of the Facility is sublet as provided in Section 9.3(a) above) without the prior written consents of the Agency, the Credit Provider Agent and the Trustee (which consents may be unreasonably withheld or delayed); provided, however, nothing contained in this Section 9.3(d) shall be deemed to limit the right of the Company in its ordinary course of business to let hotel rooms or facilities at the Facility or make available advertising kiosks or like advertising display cases within the Facility.

(c) If and to the extent consent is required, any consent by the Agency, the Credit Provider Agent or the Trustee to any act of assignment or transfer or sublease shall be held to apply only to the specific transaction thereby authorized, and any such consent shall not be construed as a waiver of the duty of the Company, or the successors or assigns of the Company, to obtain from the Agency, the Credit Provider and the Trustee consent to any other or

subsequent assignment or transfer or sublease, or as modifying or limiting the rights of the Agency, the Credit Provider Agent or the Trustee under the foregoing covenant by the Company.

(d) The Company shall have the right, in connection with any assignment or transfer of this Agreement, or otherwise, to make request in writing of the Agency that the Agency release the Indemnitor from the Indemnity Guaranty Agreement, and accept other guarantees or collateral in substitution therefor. The Company acknowledges and agrees that any such decision by the Agency shall be at its sole and absolute unlimited discretion.

(e) The Company shall deliver to the Agency on January 1 of each year, commencing January 1, 2008, a completed subtenant survey in the form attached hereto as Schedule C.

Section 9.4. Priority of Indenture. Pursuant to the Indenture, the Agency will pledge and assign the installment purchase payments and certain other moneys receivable under this Agreement to the Credit Provider Agent and the Trustee as security for payment of the principal or Redemption Price, if applicable, of, Purchase Price and interest on the Bonds and for amounts due by the Company under the Reimbursement Agreement to the Credit Provider Agent. This Agreement shall be subject and subordinate to the Indenture and the security interests, pledge and assignment thereunder. This Agreement shall also be subject and subordinate in Lien to the Development Security Documents and to any Credit Provider Mortgage.

Section 9.5. Benefit of and Enforcement by Credit Provider Agent and Bondholders. The Agency and the Company agree that this Agreement is executed in part to induce the Credit Provider to issue the Credit Enhancement and the purchase by others of the Bonds and for the further securing of the Bonds, and accordingly all covenants and agreements on the part of the Agency and the Company as set forth in this Agreement are hereby declared to be for the benefit of the Credit Provider, the Credit Provider Agent and the Holders from time to time of the Bonds and may be enforced by the Credit Provider Agent and as provided in Article VIII of the Indenture on behalf of the Bondholders by the Trustee.

Section 9.6. Amendments. This Agreement may be amended only with the concurring written consent of the Trustee and the Credit Provider Agent given in accordance with the provisions of the Indenture and only if the Company shall assume in writing the obligations of such amended agreement.

Section 9.7. Notices. All notices, requests, consents, demands and other communications to any party hereunder or any other Person specified herein shall be in writing (including bank wire, telecopy or similar writing) and shall be given to such party or other Person, addressed to it, at its address or telecopy number set forth below or such other address or telecopy number as such party or other Person may hereafter specify for the purpose by notice to the other parties or such other Persons. Each such notice, request, consent or demand or other communication shall be effective (i) if given by telecopy, when such telecopy is transmitted to the telecopy number specified below and the appropriate answer back or confirmation of receipt is received, (ii) if given by mail, three (3) Business Days after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid or (iii) if given by any other means, when delivered at the address specified below.

Party

Address

Company

123 Washington LLC
c/o The Moinian Group
530 Fifth Avenue, 18th Floor
New York, New York 10036
Attention: Mr. Joseph Moinian
Telephone No.: (212) 808-4000, Ext. 224
Facsimile No.: (212) 808-4118

with a copy to:

Proskauer Rose LLP
1585 Broadway
New York, New York 10036
Attention: Perry Cacace, Esq.
Telephone No.: (212) 969-3000
Facsimile No.: (212) 969-2900

and an additional copy to:

Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, New York 10038
Attention: Ross Moskowitz, Esq.
Telephone No.: (212) 806-5550
Facsimile No.: (212) 806-2550

Credit Provider

Landesbank Baden-Wuerttemberg,
New York Branch
280 Park Avenue, 31st Floor -
West Building
New York, New York 10017
Attention: Head of Real Estate Finance
Telephone No.: (212) 584-1760
Facsimile No.: (212) 584-1769

with a copy to:

PB Capital Corporation
230 Park Avenue
New York, New York 10169
Attention: Real Estate Portfolio Management
Telephone No.: (212) 756-5557
Facsimile No.: (212) 756-5536

Party

Address

and an additional copy to:

Kaye Scholer LLP
425 Park Avenue
New York, New York 10022
Attention: Warren J. Bernstein, Esq.
Telephone No.: (212) 836-8073
Facsimile No.: (212) 836-6673

Credit Provider Agent

PB Capital Corporation
230 Park Avenue
New York, New York 10169
Attention: Real Estate Portfolio Management
Telephone No.: (212) 756-5557
Facsimile No.: (212) 756-5536

with a copy to:

Kaye Scholer LLP
425 Park Avenue
New York, New York 10022
Attention: Warren J. Bernstein, Esq.
Telephone No.: (212) 836-8073
Facsimile No.: (212) 836-6673

Liquidity Provider

Landesbank Baden-Wuerttemberg,
New York Branch
280 Park Avenue, 31st Floor -
West Building
New York, New York 10017
Attention: Head of Real Estate Finance
Telephone No.: (212) 584-1760
Facsimile No.: (212) 584-1769

with a copy to:

PB Capital Corporation
230 Park Avenue
New York, New York 10169
Attention: Real Estate Portfolio Management
Telephone No.: (212) 756-5557
Facsimile No.: (212) 756-5536

with an additional copy to:

Party

Address

Kaye Scholer LLP
425 Park Avenue
New York, New York 10022
Attention: Warren J. Bernstein, Esq.
Telephone No.: (212) 836-8073
Facsimile No.: (212) 836-6673

Liquidity Provider Agent

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Telephone No.: (212) 756-5557
Facsimile No.: (212) 756-5536

with a copy to:

Kaye Scholer LLP
425 Park Avenue
New York, New York 10022
Attention: Warren J. Bernstein, Esq.
Telephone No.: (212) 836-8073
Facsimile No.: (212) 836-6673

Agency

New York City Industrial Development Agency
110 William Street
New York, New York 10038
Attention: General Counsel (with a copy to the
Executive Director of the Agency at the same
address)
Telephone No.: (212) 312-3563
Facsimile No.: (212) 312-3912

Trustee

U.S. Bank National Association
Corporate Trust Services
100 Wall Street, Suite 1600
New York, New York 10005
Telephone No.: (212) 361-4385
Facsimile No.: (212) 514-6841

Remarketing Agent

Goldman Sachs & Co.
85 Broad Street, 29th Floor
New York, New York 10004
Attention: Municipal Note Desk
Telephone No.: (212) 902-6639
Facsimile No.: (212) 346-4164

<u>Party</u>	<u>Address</u>
Broker-Dealer	To be appointed
Auction Agent	To be appointed
Rating Agencies:	
S&P	Standard & Poor's Rating Services Attention: Municipal Structured Surveillance 55 Water Street, 38th Floor New York, New York 10041 Telephone No.: (212) 438-2000 Facsimile No.: (212) 438-2157
Moody's	Moody's Investors Service, Inc. Public Finance Department 99 Church Street New York, New York 10007 Attention: Municipal Structured Products Group Telephone No.: (212) 553-4441 Facsimile No.: (212) 553-1066
Recognized Mezzanine Lenders	See Section 6.23(a) and Schedule G hereto
Recognized Mortgage Lenders	See Section 6.23(b) and Schedule H hereto

Section 9.8. Prior Agreements Superseded. This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral (other than any Project Documents or other agreements executed concurrently herewith or with respect to the Project), between the Agency and the Company relating to the Facility.

Section 9.9. Severability. If any clause, provision or section of this Agreement be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

Section 9.10. Inspection of Facility. The Company will permit the Trustee and the Credit Provider Agent, or their respective duly authorized agents, at all reasonable times upon written notice to enter upon the Facility and to examine and inspect the Facility and exercise their rights hereunder, under the Indenture and under the other Project Documents with respect to the Facility. The Company will further permit the Agency, or its duly authorized agent, at all reasonable times to enter upon the Facility but solely for the purpose of assuring that

the Company is operating the Facility, or is causing the Facility to be operated, as a qualified “project” under the Act consistent with the purposes set forth in the recitals to this Agreement and with the public purposes of the Agency, and not for any purpose of assuring the proper maintenance or repair of the Facility as such latter obligation is and shall remain solely the obligation of the Company.

Section 9.11. Effective Date; Counterparts. This Agreement shall become effective on the Closing Date. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.12. Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, the Agency and the Company and their respective successors and assigns.

Section 9.13. Net Agreement. It is the intention of the parties hereto that this Agreement be a “net” to the Company and that all of the installment purchase payments be available for debt service on the Bonds, and this Agreement shall be construed to effect such intent.

Section 9.14. Law Governing. This Agreement shall be governed by, and construed in accordance with, the laws of the State.

Section 9.15. Investment of Funds. Any moneys held as part of the Rebate Fund, the Earnings Fund, the Project Fund, the Installment Purchase Payments Fund or the Bond Fund or in any special fund provided for in this Agreement or in the Indenture to be invested in the same manner as in any said Fund shall, at the specific written request of an Authorized Representative of the Company, be invested and reinvested by the Trustee as provided in the Indenture (but subject to the provisions of the Tax Regulatory Agreement). Neither the Agency nor the Trustee nor any of their members, directors, officers, agents, servants or employees shall be liable for any depreciation in the value of any such investments or for any loss arising therefrom.

Interest and profit derived from such investments shall be credited and applied as provided in the Indenture, and any loss resulting from such investments shall be similarly charged.

Section 9.16. Investment Tax Credit. It is the intention of the parties that any investment tax credit or comparable credit that may ever be available shall accrue to the benefit of the Company and the Company shall, and the Agency upon advice of counsel may, make any election and take other action in accordance with the Code as may be necessary to entitle the Company to have such benefit.

Section 9.17. Waiver of Trial by Jury. THE PARTIES DO HEREBY EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY ON ANY CAUSE OF ACTION DIRECTLY OR INDIRECTLY INVOLVING THE TERMS, COVENANTS OR CONDITIONS OF THIS AGREEMENT OR THE FACILITY OR ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

THE PROVISION OF THIS AGREEMENT RELATING TO WAIVER OF A JURY TRIAL SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

Section 9.18. Non-Discrimination. (a) At all times during the maintenance and operation of the Facility, the Company shall not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Company shall use its best efforts to ensure that employees and applicants for employment with the Company are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(b) The Company shall, in all solicitations or advertisements for employees placed by or on behalf of the Company, state that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex.

(c) The Company shall furnish to the Agency all information required by the Agency pursuant to this Section and will cooperate with the Agency for the purposes of investigation to ascertain compliance with this Section.

Section 9.19. No Recourse under This Agreement or on Bonds Against Individuals. All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in his individual capacity, and no recourse shall be had for the payment of the principal of, redemption premium, if any, Sinking Fund Installments for, if any, Purchase Price or interest on the Bonds or for any claim based thereon or hereunder against any member, director, officer, employee or agent of the Agency or any natural person executing the Bonds.

All covenants, stipulations, promises, agreements and obligations of the Company contained in this Agreement shall be deemed to be the covenants, stipulation, promises, agreements and obligations of the Company, and not of any member, director, officer, employee, agent or shareholder of the Company in his individual capacity, and no recourse shall be had for the payment of amounts due hereunder against any member, director, officer, employee, agent or shareholder of the Company or any natural person executing this Agreement.

THE SERIES 2007 BONDS ARE SPECIAL LIMITED OBLIGATIONS OF THE AGENCY, PAYABLE BY THE AGENCY SOLELY OUT OF THE INSTALLMENT PURCHASE PAYMENTS PAYABLE BY THE COMPANY UNDER THIS AGREEMENT AND ANY OTHER REVENUES OR OTHER RECEIPTS, FUNDS OR MONEYS OF THE AGENCY PLEDGED TOWARD THE PAYMENT OF THE SERIES 2007 BONDS OR OTHERWISE AVAILABLE TO THE TRUSTEE UNDER THE INDENTURE FOR THE PAYMENT THEREOF.

THE SERIES 2007 BONDS DO NOT CONSTITUTE AND SHALL NOT BE A DEBT OF THE STATE OR OF THE CITY AND NEITHER THE STATE NOR THE CITY

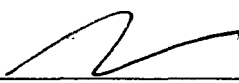
SHALL BE LIABLE THEREON. THE SERIES 2007 BONDS DO NOT GIVE RISE TO A PECUNIARY LIABILITY OR CHARGE AGAINST THE FULL FAITH AND CREDIT OR TAXING POWERS OF THE STATE OR THE CITY. THE SERIES 2007 BONDS DO NOT NOW AND SHALL NEVER CONSTITUTE A CHARGE AGAINST THE GENERAL CREDIT OF THE AGENCY NOR SHALL THE SERIES 2007 BONDS BE PAYABLE OUT OF ANY FUNDS OF THE AGENCY OTHER THAN THOSE PLEDGED THEREFOR. THE AGENCY HAS NO TAXING POWERS.

Section 9.20. Conflict with Credit Provider Documents. In the event of any conflict between any provision of this Agreement and any provision of the Credit Provider Documents, as between the Credit Provider Agent and the Company, the Credit Provider Documents shall control, and no inference shall be drawn to the contrary on the basis of any provision of this Agreement.

Section 9.21. Date of Agreement for Reference Purposes Only. The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was executed and delivered on the Closing Date.

IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs, and the Company has caused its name to be subscribed hereto by its Authorized Representative, all being done as of the year and day first above written.

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 

Maureen P. Babis
Executive Director

123 WASHINGTON LLC

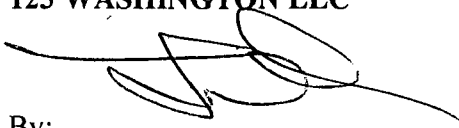
By: _____
Joseph Moinian
President

IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs, and the Company has caused its name to be subscribed hereto by its Authorized Representative, all being done as of the year and day first above written.

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Maureen P. Babis
Executive Director

123 WASHINGTON LLC


By: _____
Joseph Moinian
President

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

On the 15th day of October, in the year two thousand seven, before me, the undersigned, personally appeared Maureen P. Babis, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual executed the instrument.

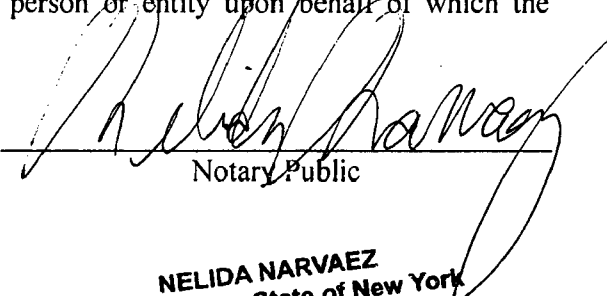


Notary Public/~~Commissioner of Deeds~~

CAROL M. HYDE
Notary Public, State of New York
No. 4977270
Qualified in Queens County
Commission Expires Jan. 28, 2011

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

On the 16th day of October, in the year two thousand seven, before me, the undersigned, personally appeared Joseph Moinian, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.



Notary Public

NELIDA NARVAEZ
Notary Public, State of New York
No. 01NA6131018
Qualified in New York County
Commission Expires July 25, 2009

APPENDICES

EXHIBIT A

Act shall mean, collectively, the New York State Industrial Development Agency Act (constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York), as amended, and Chapter 1082 of the 1974 Laws of New York, as amended.

Act of Bankruptcy, when used with respect to any Person, shall mean the filing of a petition in bankruptcy, or the commencement of another bankruptcy or similar proceeding, or in the case of the Credit Provider or the Liquidity Provider and if the Credit Provider or the Liquidity Provider is an insurance company, insolvency proceedings instituted by the commissioner of insurance having jurisdiction over such insurer, by or against such Person under any applicable bankruptcy, insolvency or similar law now or hereafter in effect.

Additional Bonds shall mean one or more Series of additional bonds issued, executed, authenticated and delivered under this Indenture.

Affiliate shall mean a Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with the Company. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of a Person, whether through the ownership of securities, by contract or otherwise.

Agency shall mean the New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State, duly organized and existing under the laws of the State, and any body, board, authority, agency or other governmental agency or instrumentality which shall hereafter succeed to the powers, duties, obligations and functions thereof.

Agency Protection Protocol shall mean, that no document, agreement or other instrument (x) shall claim any exemption from any mortgage recording tax by virtue of the Agency's interest in the Facility, (y) shall subject the Agency to any obligations or liability, pecuniary or otherwise, and (z) shall include within its pledge, Lien or security interest any interest of the Agency or the Company under the Installment Sale Agreement (including any amounts paid or payable thereunder), or the interest of the Agency in the Indemnity Guaranty Agreement (including any amounts paid or payable to the Agency thereunder).

Agency's Reserved Rights shall mean, collectively,

the right of the Agency in its own behalf to receive all Opinions of Counsel, reports, financial statements, certificates, insurance policies or certificates, or other notices or communications required to be delivered to the Agency under the Installment Sale Agreement;

(i) the right of the Agency to grant or withhold any consents or approvals required of the Agency under the Installment Sale Agreement;

(ii) the right of the Agency to enforce in its own behalf the obligation of the Company to complete the Project;

(iii) the right of the Agency to exercise in its own behalf its rights under Section 2.4 of the Installment Sale Agreement with respect to the proceeds of leasehold title insurance;

(iv) the right of the Agency to enforce or otherwise exercise in its own behalf all agreements of the Company with respect to ensuring that the Facility shall always constitute a qualified "project" as defined in and as contemplated by the Act;

(v) the right of the Agency in its own behalf (or on behalf of the appropriate taxing authorities) to enforce, receive amounts payable under or otherwise exercise its rights under Sections 1.5, 2.1, 2.2, 2.4, 3.1, 3.4, 3.5, 3.6, 3.7, 4.1, 4.3, 4.4, 4.5, 4.6, 4.7, 5.1, 6.1, 6.2, 6.3, 6.6, 6.7, 6.9, 6.10, 6.11, 6.12, 6.13, 6.14, 6.15, 6.17, 6.18, 6.19, 6.20, 6.21, 6.22, 6.23, 7.2(e), 7.6, 7.7, 8.1, 8.4, 9.3, 9.10, 9.16, 9.17, 9.18 and 9.19 of the Installment Sale Agreement; and

(vi) the right of the Agency in its own behalf to declare an Event of Default under Section 7.1 of the Installment Sale Agreement with respect to any of the Agency's Reserved Rights.

Alternate Credit Enhancement or Alternate Liquidity Facility shall mean a letter of credit, insurance policy, line of credit, surety bond, standby purchase agreement or other security or liquidity instrument, as the case may be, issued in accordance with the terms of the Indenture as a replacement or substitute for any Credit Enhancement or Liquidity Facility, as applicable, then in effect.

Alternate Rate shall mean, on any Rate Determination Date, for any Mode, a rate per annum equal to 110% of (a) the SIFMA Municipal Swap Index of Municipal Market Data most recently available as of the date of determination, or (b) if such index is no longer available, or if the SIFMA Municipal Swap Index is no longer published, the S&P Weekly High Grade Index (formerly the J.J. Kenny Index), or, if neither the SIFMA Municipal Swap Index nor the S&P Weekly High Grade Index is published, the index determined to equal the prevailing rate determined by the Remarketing Agent for tax-exempt state and local government bonds meeting criteria determined in good faith by the Remarketing Agent to be comparable under the circumstances to the criteria used by the Securities Industry and Financial Markets Association to determine the SIFMA Municipal Swap Index just prior to when the Securities Industry and Financial Markets Association stopped publishing the SIFMA Municipal Swap Index. The Trustee shall make the determinations required by this determination, upon notification from the Company, if there is no Remarketing Agent, if the Remarketing Agent fails to make any such determination or if the Remarketing Agent has suspended its remarketing efforts in accordance with the Remarketing Agreement.

Approved Developer or Approved Transferee shall mean a Person

(y) who delivers to the Agency the Required Disclosure Statement, in form and substance satisfactory to the Agency (provided that if any modification to such form of Required Disclosure Statement is not acceptable to the Agency acting in its sole discretion, then the Company shall be in default under the Installment Sale Agreement), and

(z) whose background investigative check (or any successor or replacement service of the City) and the background investigative check (or any successor or replacement service of the City) of such Person's Principals by the Agency, shall in either case not uncover any material negative results as being interpreted under then-existing City policy without discrimination.

Auction Mode shall mean the Mode during which the Series 2007 Bonds are in an Initial Period or an Auction Period.

Authorized Denominations shall mean (i) with respect to Series 2007 Bonds in a Daily Mode or Weekly Mode, \$100,000 and any integral multiple of \$5,000 in excess thereof, (ii) with respect to Series 2007 Bonds in a Flexible Mode, \$100,000 and any integral multiple of \$1,000 in excess thereof, (iii) with respect to Series 2007 Bonds in a Long-Term Mode, \$5,000 and any integral multiple thereof, and (iv) with respect to Series 2007 Bonds in an Auction Mode, \$25,000 and integral multiples thereof.

Authorized Representative shall mean (i) in the case of the Agency, the Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel, Vice President for Legal Affairs, Secretary or Assistant Secretary of the Agency, or any officer or employee of the Agency authorized to perform specific acts or to discharge specific duties, in each case on behalf of the Agency, and (ii) in the case of the Company, any member of the Company or any officer or employee of the Company authorized to so act on behalf of the Company; provided, however, that in each case for which a certification or other statement of fact or condition is required to be submitted by an Authorized Representative to any Person pursuant to the terms of the Installment Sale Agreement or any other Security Document, such certificate or statement shall be executed only by an Authorized Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement.

Available Amount shall mean the amount available under the Credit Enhancement or Liquidity Facility, as applicable, to pay the principal of and interest on the Series 2007 Bonds or the Purchase Price of the Series 2007 Bonds, as applicable.

Beneficial Owner shall mean, whenever used with respect to a Series 2007 Bond, the Person in whose name such Series 2007 Bond is recorded as the Beneficial Owner of such Series 2007 Bond by the respective systems of DTC and each of the Participants of DTC. If at any time the Series 2007 Bonds are not held in the Book-Entry System, Beneficial Owner shall mean "Holder" for purposes of this Indenture.

Bond Counsel shall mean Hawkins Delafield & Wood LLP or other counsel acceptable to the Agency and the Trustee experienced in matters relating to tax exemption of interest on bonds issued by states and their political subdivisions.

Bond Fund shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

Bondholder, Holder of Bonds, Holder, Owner or holder shall mean any Person who shall be the registered owner of any Bond or Bonds.

Bond Registrar shall mean the Trustee acting as registrar as provided in Section 3.10 of the Indenture.

Bond Resolution shall mean the resolution of the Agency adopted on March 13, 2007 authorizing the Project and the issuance of the Series 2007 Bonds.

Bonds shall mean the Series 2007 Bonds and any Additional Bonds.

Business Day shall mean any day other than (i) a Saturday or Sunday or a legal holiday, or (ii) a day on which the Trustee, the Tender Agent, the Paying Agent, the Remarketing Agent, if any, or the Broker-Dealer, if any, are required or authorized by law or executive order to be closed, or (iii) a day on which the office of the Credit Provider, the Credit Provider Agent, the Liquidity Provider or the Liquidity Provider Agent at which it will pay or reimburse draws or advances are required or authorized to be closed, or (iv) a day on which banking institutions in the City or any city in which the principal office of the Trustee is located are authorized by law or executive order to remain closed, or (v) a day on which The New York Stock Exchange or The Depository Trust Company is closed.

Cede & Co. shall mean Cede & Co., the nominee of DTC, and any successor nominee of DTC with respect to the Series 2007 Bonds.

City shall mean The City of New York.

Closing Date shall mean October 18, 2007, the date of the initial issuance and delivery of the Series 2007 Bonds.

Code shall mean the Internal Revenue Code of 1986, as amended, including the regulations thereunder.

Common Elements shall have the meaning assigned to such term in the Condominium Documents.

Company shall mean 123 Washington LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its permitted successors and assigns pursuant to Section 6.1 or 9.3 of the Installment Sale Agreement (including any surviving, resulting or transferee entity as provided in Section 6.1 of the Installment Sale Agreement).

Company Parent shall mean any Person (other than Joseph Moinian) who shall own, directly or indirectly, an interest in the Company, or otherwise be a member, directly or indirectly, in the Company, including, without limitation, any such Person as of the Closing Date.

Company Purchase Account shall mean the special trust account of the Purchase Fund so designated, established pursuant to Section 5.01 of the Indenture.

Company's Property shall have the meaning ascribed to such term in Section 4.1(c) of the Installment Sale Agreement.

Condominium shall mean that certain Condominium created pursuant to the Condominium Act and the Condominium Documents.

Condominium Act shall mean Article 9-B of the New York Real Property Law (339-d *et seq.*) of the State of New York and all modification, supplements and replacements thereof and all regulations with respect thereto, now or hereafter enacted or promulgated.

Condominium Board shall mean the Governing Body under the Condominium Documents.

Condominium Conversion Effective Date shall mean that date upon which the Development shall be subjected to a condominium regime and the Facility shall constitute a portion of a separate legally constituted condominium unit.

Condominium Documents shall mean the declaration of condominium, by-laws and rules and regulations of a condominium association and any and all other documentation related to the proper formation and operation of the condominium regime to be established at the Development under State law.

Conduct Representation shall mean any of the representations made by the Company in Section 1.5(bb) of the Installment Sale Agreement or in any Required Disclosure Statement delivered to the Agency.

Control or Controls shall mean the power to direct the management and policies of a Person (x) through the ownership of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

Costs of Issuance shall mean issuance costs with respect to the Series 2007 Bonds described in Section 147(g) of the Code and any regulations thereunder, including but not limited to the following: underwriter's spread (whether realized directly or derived through purchase of Series 2007 Bonds at a discount below the price at which they are expected to be sold to the public); counsel fees (including bond counsel, underwriter's counsel, Trustee's counsel, Agency's counsel, Company's counsel, as well as any other specialized counsel fees incurred in connection with the borrowing); financial advisor fees of any financial advisor to the Agency or the Company incurred in connection with the issuance of the Series 2007 Bonds; Rating Agency fees; Trustee and Paying Agent fees; Credit Enhancement fees and the fees and expenses of counsel to the Credit Provider and to the Credit Provider Agent; Liquidity Provider fees and the fees and expenses of counsel to the Liquidity Provider and to the Liquidity Provider Agent; accountant fees and other expenses related to issuance of the Series 2007 Bonds; printing costs (for the Series 2007 Bonds and of the preliminary and final Official Statement relating to the Series 2007 Bonds); fees and expenses of the Agency incurred in connection with the issuance of the Series 2007 Bonds; and Blue Sky fees and expenses.

Credit Enhancement shall mean a letter of credit, insurance policy, surety bond, line of credit or other instrument then in effect which secures or guarantees the payment of principal of and interest on the Series 2007 Bonds.

Credit Enhancement Deficiency shall have the meaning assigned such term by Section 5.06(c) of the Indenture.

Credit Provider shall mean any bank, insurance company, pension fund or other financial institution which provides a Credit Enhancement or Alternate Credit Enhancement for the Series 2007 Bonds.

Credit Provider Agent shall mean that Person (who may also be the Credit Provider) who shall be designated in writing by the Credit Provider to the Agency and the Trustee, as consented to by the Company, to act as agent for the Credit Provider in the capacity of Credit Provider Agent under the Indenture and the other Security Documents, subject to revocation, rescission, amendment or replacement by the Credit Provider by similar written notice to the Agency and the Trustee and consented to by the Company. Any such replacement by the Credit Provider of a new Credit Provider Agent shall be subject to the prior written consent of the Company. In the absence of any such current designation, the Credit Provider shall be deemed the Credit Provider Agent.

Credit Provider Disqualification Event shall mean any of the following:

(a) the Credit Provider has wrongfully dishonored a draft under the Credit Enhancement and such dishonor has not been cured;

(b) the Credit Enhancement shall at any time for any reason be determined under applicable law, by a court of final competent jurisdiction, to be null and void and not valid and binding on the Credit Provider, or the validity or enforceability thereof is being contested by the Credit Provider or by any governmental agency or authority that has taken control of the assets of the Credit Provider in any bankruptcy, insolvency or similar proceedings and is authorized under applicable law to so act on behalf of the Credit Provider;

(c) an Act of Bankruptcy shall exist with respect to the Credit Provider and the Trustee has received written notice of the existence of such Act of Bankruptcy, or the Credit Provider is temporarily restrained from making a payment under the Credit Enhancement by court order or by action of any governmental or quasi-governmental body;

(d) the Credit Enhancement is no longer in effect and all amounts due and payable by the Company pursuant to the Reimbursement Agreement and the other Credit Provider Documents have been paid in full (such repayment to be evidenced by a certificate to such effect from the Credit Provider Agent to the Trustee); or

(e) a Credit Enhancement Deficiency is continuing.

Credit Provider Documents shall mean, collectively, the Reimbursement Agreement relating to the Credit Enhancement and any other document executed by the Company (and/or its guarantors) in connection with the Reimbursement Agreement.

Credit Provider Failure or Liquidity Provider Failure shall mean (i) a failure of the Credit Provider or the Liquidity Provider, as applicable, to pay a properly presented and conforming draw or request for advance under the Credit Enhancement or the Liquidity Facility,

as applicable, (ii) the filing or commencement of any bankruptcy or insolvency proceedings by or against the Credit Provider or the Liquidity Provider, as applicable, (iii) the Credit Provider or the Liquidity Provider, as applicable, shall declare a moratorium on the payment of its unsecured debt obligations or shall repudiate the Credit Enhancement or the Liquidity Facility, as applicable, (iv) the Credit Enhancement or the Liquidity Facility shall at any time for any reason be determined under applicable law, by a court of final competent jurisdiction, to be null and void and not valid and binding on the Credit Provider or the Liquidity Provider, as applicable, or the validity or enforceability thereof is being contested by the Credit Provider or the Liquidity Provider, as applicable, or (v) the Credit Provider or the Liquidity Provider, as applicable, is temporarily restrained from making a payment under the Credit Enhancement or the Liquidity Facility by court order or by action of any governmental or quasi-governmental body.

Credit Provider Mortgage shall mean a mortgage, Lien or other security interest in favor of the Credit Provider or the Credit Provider Agent upon the Company's ownership interest in the Facility securing amounts as may be owed by the Company under the Reimbursement Agreement or other Credit Provider Documents, provided, however, that each such instrument shall comply with the Agency Protection Protocol.

Current Mode shall mean the Mode then prevailing for the related Series 2007 Bonds as specified in Section 2.08(a)(i) of the Indenture.

Daily Mode shall mean the Mode during which the Series 2007 Bonds bear interest at the Daily Rate.

Daily Rate shall mean the per annum interest rate on any Series 2007 Bond in the Daily Mode determined pursuant to Section 2.04(a) of the Indenture.

Daily Rate Period shall mean the period during which a Series 2007 Bond in the Daily Mode shall bear interest at a Daily Rate, which shall be from the Business Day upon which a Daily Rate is set to but not including the next succeeding Business Day.

Defeasance Obligations shall mean Government Obligations that are not subject to redemption prior to maturity.

Delayed Remarketing Period shall have the meaning specified in Section 2.17(b) of the Indenture.

Determination of Taxability shall mean (i) the filing by the Company or its representatives of a certificate with the Agency, the Trustee, the Credit Provider Agent or any Bondholder stating that an Event of Taxability has occurred, (ii) the receipt by the Company, the Trustee, the Agency, the Credit Provider Agent or any Bondholder after proceedings for which the Company had notice and an opportunity to participate in a final determination from the Internal Revenue Service or a court of proper jurisdiction to the effect that an Event of Taxability has occurred, or (iii) the receipt by any Bondholder or former Bondholder of an opinion of Bond Counsel to the effect that an Event of Taxability has occurred.

Development shall mean that certain approximately 400,000 square foot mixed-use hotel, retail and residential condominium development of which the Facility is a part.

Development Lenders Agent shall mean PB Capital Corporation, a corporation organized and existing under the laws of the State of Delaware, acting as agent for itself and certain other institutional lenders, with respect to a certain construction loan made to the Company in connection with the Development, together with its successors and assigns in such capacity.

Development Security Documents shall mean

(i) that certain Amended and Restated Senior Loan Mortgage, Assignment of Leases and Rents and Security Agreement, dated as of March 8, 2007, as amended, from the Company, as mortgagor, to the Development Lenders Agent, as mortgagee;

(ii) that certain Senior Loan Assignment of Leases and Rents, dated as of March 8, 2007, as amended, from the Company, as assignor, to the Development Lenders Agent, as assignee;

(iii) that certain Building Loan Mortgage, Assignment of Leases and Rents and Security Agreement, dated as of March 8, 2007, as amended, from the Company, as mortgagor, to the Development Lenders Agent, as mortgagee;

(iv) that certain Building Loan Assignment of Leases and Rents, dated as of March 8, 2007, as amended, from the Company, as assignor, to the Development Lenders Agent, as assignee;

(v) that certain Consolidated, Amended and Restated Project Loan Mortgage, Assignment of Leases and Rents and Security Agreement, dated as of March 8, 2007, as amended, from the Company, as mortgagor, to the Development Lenders Agent, as mortgagee;

(vi) that certain Project Loan Assignment of Leases and Rents, dated as of March 8, 2007, as amended, from the Company, as assignor, to the Development Lenders Agent, as assignee;

(vii) that certain Cash Management Agreement, dated as of March 8, 2007, as amended, among the Company, the Development Lenders Agent and LaSalle Bank, National Association, as Deposit Bank;

(viii) that certain Senior Loan Agreement, dated and effective as of March 8, 2007, as amended, by and between the Company, the Development Lenders Agent and certain lenders signatory thereto;

(ix) that certain Project Loan Agreement, dated and effective as of March 8, 2007, as amended, by and between the Company, the Development Lenders Agent and certain lenders signatory thereto;

(x) that certain Building Loan Agreement, dated and effective as of March 8, 2007, as amended, by and between the Company, the Development Lenders Agent and certain lenders signatory thereto (the "Building Loan Agreement");

(xi) all other Loan Documents (as such term is defined in the Building Loan Agreement); and

(xii) all First Mezzanine Loan Documents and Second Mezzanine Loan Documents (as such terms are defined in the Building Loan Agreement);

together with any and all amendments to any of the above documents and any documents executed by the Company in connection with the refinancing of the indebtedness evidenced and secured by the above documents.

DTC shall mean The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York, and its successors and assigns.

Earnings Fund shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

Electronic Means shall mean telecopy, facsimile transmission, e-mail transmission or other similar electronic means of communication providing evidence of transmission, including a telephonic communication confirmed by any other method set forth in this definition.

Event of Default shall have the meaning specified in Section 8.01 of the Indenture or in Section 7.1 of the Installment Sale Agreement, as applicable.

Event of Taxability shall mean the date specified in a Determination of Taxability as the date interest paid or payable on any Bond becomes includable for federal income tax purposes in the gross income of any Holder thereof (other than a Holder who is a "substantial user" of the Facility or "related person") as a consequence of any act, omission or event whatsoever, including any change of law, and regardless of whether the same was within or beyond the control of the Company.

Excluded Premises shall mean those certain premises described in the Description of Excluded Premises in the appendices attached to the IDA Lease, to the Installment Sale Agreement and to the Indenture, such premises being so excluded by reason of the intended use thereof for a restaurant, bar and/or other retail uses.

Expiration Date shall mean the stated expiration date of the Credit Enhancement or the Liquidity Facility, as it may be extended from time to time as provided in the Credit Enhancement or the Liquidity Facility, or any earlier date on which the Credit Enhancement or the Liquidity Facility shall terminate at the direction of the Company, expire or be cancelled.

Facility shall mean,

(i) prior to the Condominium Conversion Effective Date, that certain parcel of air space described in the Description of Facility in the appendices attached to the IDA Lease, to the Installment Sale Agreement and to the Indenture, together with all structures and improvements and all structural components within such parcel of air space (e.g., walls, partitions, floors, and ceilings; permanent coverings therefor such as paneling or tiling; windows

and doors; all components (whether in or adjacent to the structure) of a central air conditioning or heating system, including motors, compressors, pipes and ducts; plumbing and plumbing fixtures, such as sinks and bathtubs; electric wiring and lighting fixtures; chimneys; stairs; escalators and elevators, including all components thereof; sprinkler systems; fire escapes; and all other components related to the maintenance and operation of the structure or the improvements therein) and all fixtures, including all replacements improvements, extensions, substitutions, restorations, repairs or additions thereto, which in each such case, upon and after the Condominium Conversion Effective Date, will be part of the Hotel Unit or the Common Elements thereof, but excluding therefrom, however, the Excluded Premises; and

(ii) on and after the Condominium Conversion Effective Date, the Hotel Unit and related Common Elements pertaining to the Hotel Unit, excluding however, the Excluded Premises, provided that the Hotel Unit shall not encompass more than that property described in paragraph (i) above other than the Common Elements related thereto;

provided, however, that "Facility" shall not include the Excluded Premises or any fixture, improvement or item of equipment unless it is either (y) an integral component of the structure comprising part of the Facility, or (z) not capable of being removed from its location and used at another site. Upon the Condominium Conversion Effective Date, the Facility shall thereafter consist of the Hotel Unit and related Common Elements (excluding, however, the Excluded Premises) without need for further amendments to the IDA Lease, to the Installment Sale Agreement and to the Indenture.

Favorable Opinion of Bond Counsel shall mean, with respect to any action the occurrence of which requires such an opinion, an unqualified Opinion of Counsel, which shall be a Bond Counsel, to the effect that such action is permitted under the Act and the Indenture and will not adversely affect the exclusion of interest on the Series 2007 Bonds from gross income for purposes of Federal income taxation (subject to the inclusion of any exceptions contained in the opinion delivered upon original issuance of the Series 2007 Bonds).

Fiscal Year of the Company shall mean a year of 365 or 366 days, as the case may be, commencing on January 1 and ending on December 31, or such other year of similar length as to which the Company shall have given prior written notice thereof to the Agency, the Trustee and the Credit Provider Agent at least ninety (90) days prior to the commencement thereof.

Fitch shall mean Fitch, Inc., a Delaware corporation, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Fitch" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, by notice to the other Notice Parties.

Fixed Rate shall mean the per annum interest rate on any Series 2007 Bond in the Fixed Rate Mode determined pursuant to Section 2.05(b) of the Indenture.

Fixed Rate Bond shall mean a Series 2007 Bond in the Fixed Rate Mode.

Fixed Rate Mode shall mean the Mode during which the Series 2007 Bonds bear interest at the Fixed Rate.

Fixed Rate Period shall mean for the Series 2007 Bonds in the Fixed Rate Mode, the period from the Mode Change Date upon which the Series 2007 Bonds were converted to the Fixed Rate Mode to but not including the Maturity Date for the Series 2007 Bonds.

Flexible Mode shall mean the Mode during which the Series 2007 Bonds bear interest at the Flexible Rate.

Flexible Rate shall mean the per annum interest rate on a Series 2007 Bond in the Flexible Mode determined for such Series 2007 Bond pursuant to Section 2.03 of the Indenture. The Series 2007 Bonds in the Flexible Mode may bear interest at different Flexible Rates.

Flexible Rate Bond shall mean a Series 2007 Bond in the Flexible Mode.

Flexible Rate Period shall mean the period of from one to 270 calendar days (which period must end on a day preceding a Business Day) during which a Flexible Rate Bond shall bear interest at a Flexible Rate, as established by the Remarketing Agent pursuant to Section 2.03 of the Indenture. The Series 2007 Bonds in the Flexible Mode may be in different Flexible Rate Periods.

Governing Body shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

Government Obligations shall mean the following: (a) direct and general obligations of, or obligations unconditionally guaranteed by, the United States of America, (b) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the payment of which is unconditionally guaranteed as a full faith and credit obligation of the United States of America for the timely payment thereof or (c) securities or receipts evidencing ownership interests in obligations or specified portions (such as principal or interest) of obligations described in clauses (a) or (b) above.

Guaranty Agreement shall mean the Guaranty Agreement, dated as of October 1, 2007, from the Company to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Hotel Operating Agreements shall mean (i) that certain W New York-Downtown Operating Agreement and that certain W New York-Downtown Technical Services Agreement, each dated as of March 8, 2007, as amended, and each between the Company and the Hotel Operator, as each of the same may be amended or supplemented in accordance with its terms, and (ii) any replacement agreements entered into by the Company with any other entity providing for the operation of the Facility.

Hotel Operator shall mean Starwood Hotels & Resorts Worldwide, Inc., a corporation organized and existing under the laws of the State of Maryland, and its successors and assigns or replacements under the Hotel Operating Agreements.

Hotel Unit shall mean the Unit to be known as the Hotel Unit under the Condominium Documents and any directly related Common Elements to the Hotel Unit.

IDA Lease shall mean the Lease Agreement, dated as of October 1, 2007, between the Company and the Agency, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Impositions shall mean all taxes (including all ad valorem, sales (including those imposed on hotel charges), use, single business, gross receipts, value added, intangible transaction privilege, privilege, license or similar taxes), assessments (including to the extent not discharged prior to the Closing Date, all assessments for public improvements or benefits, business improvement district assessments, water, sewer or other rents and charges, excises, levies, fees (including license, permit, inspection, authorization and similar fees), and all other governmental charges, in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every character in respect of the Facility or any rents or revenues (including all interest and penalties thereon), which at any time prior to, during or in respect of the term hereof may be assessed or imposed on or in respect of or be a Lien upon (a) the Company, (b) the Facility, or any part thereof or any rents or revenues therefrom or any estate, right, title or interest therein, or (c) any occupancy, operation, use or possession of, or sales from, or activity conducted on, or in connection with the Facility or the use of the Facility or any part thereof. Nothing contained in the Installment Sale Agreement shall be construed to require the Company to pay any tax, assessment, levy or charge in the nature of a franchise, capital levy, estate, inheritance, succession, income or net revenue tax.

Indemnitor shall mean Joseph Moinian, an individual having an office as of the Closing Date c/o The Moinian Group, 530 Fifth Avenue, Suite 1800, New York, New York, and his estate, representatives, administrators, executors, heirs and permitted assigns.

Indemnity Guaranty Agreement shall mean that certain Indemnity Guaranty Agreement, dated as of October 1, 2007, from the Indemnitor to the Agency, and shall include any and all amendments thereof and supplements thereto hereafter made.

Indenture shall mean the Indenture of Trust, dated as of October 1, 2007, between the Agency and the Trustee, as from time to time amended or supplemented by Supplemental Indentures in accordance with Article XI of the Indenture.

Independent Engineer shall mean a Person (not an employee of either the Agency or the Company or any Affiliate thereof) registered and qualified to practice engineering or architecture under the laws of the State, selected by the Company, and approved, in writing, by the Credit Provider Agent, the Trustee and the Agency (which approvals shall not be unreasonably withheld).

Installment Purchase Payment Date shall mean each Interest Payment Date, Principal Payment Date, Redemption Date and Sinking Fund Installment Payment Date.

Installment Purchase Payments Fund shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

Installment Sale Agreement shall mean the Installment Sale Agreement and Assignment of Lease, dated as of October 1, 2007, between the Agency and the Company, and

shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Interest Account shall mean the special trust account of the Bond Fund so designated, established pursuant to Section 5.01 of the Indenture.

Interest Accrual Period shall mean the period during which a Series 2007 Bond accrues interest payable on the next Interest Payment Date applicable thereto. Each Interest Accrual Period shall commence on (and include) the last Interest Payment Date to which interest has been paid (or, if no interest has been paid, from the date of original authentication and delivery of the Series 2007 Bonds) to, but not including, the Interest Payment Date on which interest is to be paid. If, at the time of authentication of any Series 2007 Bond, interest is in default or overdue on the Series 2007 Bonds, such Series 2007 Bond shall bear interest from the date to which interest has previously been paid in full or made available for payment in full on Outstanding Series 2007 Bonds.

Interest Payment Date shall mean each date on which interest is to be paid and is: (i) with respect to the Series 2007 Bonds in the Flexible Mode, each Mandatory Purchase Date applicable thereto; (ii) with respect to the Series 2007 Bonds in the Daily Mode or Weekly Mode, the first Business Day of each month; (iii) with respect to the Series 2007 Bonds in a Term Rate Mode or a Fixed Rate Mode, the first day of April and October of each year commencing with the first April 1 or October 1 as shall first follow by at least three (3) months the month in which such Term Rate Mode or Fixed Rate Mode takes effect, or, upon the receipt by the Trustee of a Favorable Opinion of Bond Counsel, any other six (6)-month interval chosen by the Company (beginning with the first such day which is at least three (3)-months after the Mode Change Date) and, with respect to a Term Rate Period, the final day of the current Interest Period if other than a regular six (6)-month interval; (iv) without duplication as to any Interest Payment Date listed above, each Maturity Date; (v) with respect to any Liquidity Provider Bonds, the day set forth in the related Reimbursement Agreement and (vi) with respect to the Series 2007 Bonds in the Auction Mode, Interest Payment Date shall have the meaning set forth in Exhibit B to the Indenture.

Interest Period shall mean, for the Series 2007 Bonds in a particular Mode, the period of time that the Series 2007 Bonds bear interest at the rate (per annum) which becomes effective at the beginning of such period, and shall include an Auction Rate Period, a Flexible Rate Period, a Daily Rate Period, a Weekly Rate Period, a Term Rate Period and a Fixed Rate Period.

Legal Requirements shall mean the respective Constitutions of the United States and the State of New York and all laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, certificates of occupancy, directions and requirements (including but not limited to zoning, land use, planning, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices) of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary,

that are applicable now or may be applicable at any time hereafter to (i) the Company, (ii) the Facility or any part thereof, or (iii) any use or condition of the Facility or any part thereof.

Letter of Representation and Indemnity Agreement shall mean the Letter of Representation and Indemnity Agreement from the Company and the Indemnitor, dated the Closing Date, to the Agency, the Trustee, the Remarketing Agent, the Underwriter, the Credit Provider, the Credit Provider Agent, the Liquidity Provider and the Liquidity Provider Agent.

Lien shall have the meaning assigned to such term in Section 6.7 of the Installment Sale Agreement.

Liquidity Facility shall mean any letter of credit, line of credit, standby purchase agreement or other instrument then in effect which provides for the payment of the Purchase Price of Series 2007 Bonds upon the tender thereof in the event remarketing proceeds are insufficient therefor.

Liquidity Facility Purchase Account shall mean the special trust account so designated, established pursuant to Section 5.01 of the Indenture.

Liquidity Provider shall mean any bank, insurance company, pension fund or other financial institution which provides a Liquidity Facility or Alternate Liquidity Facility for the Series 2007 Bonds:

Liquidity Provider Agent shall mean that Person (who may also be the Liquidity Provider) who shall be designated in writing by the Liquidity Provider to the Agency and the Trustee, as consented to by the Company, to act as agent for the Liquidity Provider in the capacity of Liquidity Provider Agent under the Indenture and the other Security Documents, subject to revocation, rescission, amendment or replacement by the Liquidity Provider by similar written notice to the Agency and the Trustee and consented to by the Company. Any such replacement by the Liquidity Provider of a new Liquidity Provider Agent shall be subject to the prior written consent of the Company. In the absence of any such current designation, the Liquidity Provider shall be deemed the Liquidity Provider Agent.

Liquidity Provider Bonds shall mean any Series 2007 Bonds purchased by the Liquidity Provider with funds drawn on or advanced under the Liquidity Facility.

Liquidity Provider Documents shall mean, collectively, the Reimbursement Agreement relating to the Liquidity Facility and any other document executed by the Company in favor of the Liquidity Provider or the Liquidity Provider Agent in connection therewith.

Long-Term Mode shall mean a Term Rate Mode or a Fixed Rate Mode.

Loss Event shall have the meaning set forth for such term in Section 5.1 of the Installment Sale Agreement.

Mandatory Purchase Date shall mean: (i) with respect to a Flexible Rate Bond, the first Business Day following the last day of each Flexible Rate Period with respect to such Bond, (ii) for Series 2007 Bonds in the Term Rate Mode, on the first Business Day following the last

day of each Term Rate Period, (iii) any Mode Change Date (except a change in Mode between the Daily Mode and the Weekly Mode), (iv) any Substitution Date, (v) the fifth (5th) Business Day prior to the Expiration Date, (vi) the date specified by the Trustee following the receipt of a written direction of mandatory tender from the Credit Provider Agent stating that it is authorized to so direct under the Credit Provider Documents, which date shall be a Business Day not more than twenty-five (25) nor less than twenty (20) days after the Trustee's receipt of notice of such direction from the Credit Provider Agent or the Liquidity Provider Agent and in no event later than the day preceding any termination date specified by the Credit Provider Agent or the Liquidity Provider Agent, (vii) the date specified by the Trustee following receipt of notice by the Trustee from the Credit Provider that the Credit Enhancement will not be reinstated following a drawing to pay interest on the Series 2007 Bonds (other than interest on Series 2007 Bonds no longer Outstanding after such drawing) which date shall be a Business Day not more than five (5) days after the Trustee's receipt of such notice, (viii) for Series 2007 Bonds in the Daily Mode or Weekly Mode, any Business Day specified by the Company not less than twenty (20) days after the Trustee's receipt of such notice and in no event later than the day preceding the Expiration Date, and (ix) the date specified by the Trustee following the receipt of a written direction of mandatory tender from the Credit Provider stating that it has not been reimbursed in accordance with its agreements providing for such reimbursement, which date shall be a Business Day not more than twenty-five (25) nor less than twenty (20) days after the Trustee's receipt of notice of such direction from the Credit Provider and in no event later than the day preceding any termination date specified by the Credit Provider.

Material Indemnitor Covenant shall mean any of those covenants of the Indemnitor under Sections 2.10, 2.11 or 2.14 of the Indemnity Guaranty Agreement.

Maturity Date shall mean, with respect to the Series 2007 Bonds, October 1, 2042, or if established pursuant to Section 2.08(b)(v) of the Indenture upon a change to the Fixed Rate Mode, any Serial Maturity Date.

Maximum Interest Rate shall mean, with respect to all Series 2007 Bonds other than Liquidity Provider Bonds, a rate of interest equal to the lesser of (i) fifteen percent (15%) per annum, or (ii) so long as the Series 2007 Bonds are entitled to the benefits of a Credit Enhancement, the maximum interest rate with respect to the Series 2007 Bonds specified in the Credit Enhancement, and with respect to Liquidity Provider Bonds, the rate specified in the Liquidity Facility or related agreements, and in no event shall such rate(s) exceed the maximum permitted by, or enforceable under, applicable law.

Mezzanine Financing shall mean any financing with respect to the Development secured in whole or in part by an ownership interest in the Company or in a Company Parent.

Mezzanine Lender shall mean that Person who shall, with respect to a Mezzanine Financing, be the current lender of such Financing.

Minimum Rating Requirement shall mean that the Credit Enhancement Provider and the Liquidity Enhancement Provider shall each have a long-term debt rating of at least "AA" by S&P or at least "Aa" by Moody's, except to the extent otherwise acceptable to the Agency in its sole and absolute unlimited discretion.

Mode shall mean, as the context may require, the Auction Mode, the Flexible Mode, the Daily Mode, the Weekly Mode, the Term Rate Mode or the Fixed Rate Mode.

Mode Change Date shall mean, with respect to the Series 2007 Bonds in a particular Mode, the day on which another Mode for the Series 2007 Bonds begins.

Mode Change Notice shall mean the notice from the Company to the other Notice Parties of the Company's intention to change the Mode with respect to the Series 2007 Bonds.

Moody's shall mean Moody's Investors Service, Inc., a Delaware corporation, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, by notice to the other Notice Parties.

Mortgage Financing shall mean a financing or other loan secured by a mortgage lien on the Facility which satisfies the Agency Protection Protocol.

Mortgage Lender shall mean that Person who shall, with respect to a Mortgage Financing, be the current lender of such Financing.

Net Proceeds shall mean, when used with respect to any insurance proceeds or condemnation award, compensation or damages, the gross amount from any such proceeds, award, compensation or damages less all expenses (including attorneys' fees and any extraordinary expenses of the Agency, the Credit Provider Agent or the Trustee) incurred in the collection thereof.

New Mode shall mean the new Mode following a change in Mode.

Notice Parties shall mean the Agency, the Trustee, the Tender Agent, the Bond Registrar, the Remarketing Agent, if any, the Broker-Dealer, if any, the Paying Agent, the Auction Agent, if any, the Broker-Dealer, if any, the Credit Provider, the Credit Provider Agent, the Liquidity Provider, the Liquidity Provider Agent and the Company.

Opinion of Counsel shall mean a written opinion, acceptable to the Trustee, the Credit Provider Agent and the Agency, of counsel who may (except as otherwise expressly provided in the Installment Sale Agreement or any other Security Document) be counsel for the Company, the Credit Provider Agent or the Agency and who shall be acceptable to the Trustee and the Credit Provider Agent.

Outstanding, when used with reference to a Bond or Bonds, as of any particular date, shall mean all Bonds that have been issued, executed, authenticated and delivered under the Indenture, except:

(i) Bonds cancelled by the Trustee because of payment or redemption prior to maturity or surrendered to the Trustee under the Indenture for cancellation;

(ii) any Bond (or portion of a Bond) for the payment or redemption of which, in accordance with Section 10.01 of the Indenture, there has been separately set aside and held in the Redemption Account of the Bond Fund either:

(A) moneys constituting Priority Amounts, and/or

(B) Defeasance Obligations constituting Priority Amounts in such principal amounts, of such maturities, bearing such interest and otherwise having such terms and qualifications as shall be necessary to provide moneys,

in an amount sufficient to effect payment of the principal or applicable Redemption Price of such Bond, together with accrued interest on such Bond to the payment or redemption date, which payment or redemption date shall be specified in irrevocable instructions given to the Trustee to apply such moneys and/or Defeasance Obligations to such payment on the date so specified, provided, that, if such Bond or portion thereof is to be redeemed, notice of such redemption shall have been given as provided in the Indenture or provision satisfactory to the Trustee shall have been made for the giving of such notice; and

(iii) Bonds in exchange for or in lieu of which other Bonds shall have been authenticated and delivered under Article III of the Indenture,

provided, however, that in determining whether the Holders of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Bonds including Liquidity Provider Bonds owned by the Company or any Affiliate of the Company shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Bonds that have been pledged in good faith to a Person other than the Credit Provider Agent may be regarded as Outstanding for such purposes if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and that the pledgee is not the Company or any Affiliate of the Company.

Participants shall mean those financial institutions for whom the Securities Depository effects book entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

Paying Agent shall mean any paying agent for the Bonds appointed pursuant to this Indenture (and may include the Trustee) and its successor or successors and any other corporation which may at any time be substituted in its place pursuant to this Indenture.

Permitted Encumbrances shall mean, as of any particular time,

the IDA Lease, the Installment Sale Agreement, this Indenture and any other Security Documents;

any Condominium Documents, any Development Security Documents, any Hotel Operating Agreements and any Credit Provider Mortgage, but each only to the extent that they satisfy the Agency Protection Protocol;

Liens for real estate taxes, assessments, levies and other governmental charges, the payment of which is not in default;

utility, access and other easements and rights-of-way restrictions and exceptions that an Authorized Representative of the Company certifies to the Agency, the Trustee and the Credit Provider Agent will not interfere with or impair the Company's use of the Facility as provided in the Installment Sale Agreement;

such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to property similar in character to the Facility and as do not, in the Opinion of Counsel, either singly or in the aggregate, materially impair the property affected thereby for the purpose for which it was acquired and held by the Agency under the Installment Sale Agreement;

those exceptions to title of the Facility that exist on the Closing Date and as set forth in the title insurance policy provided to the Credit Provider Agent on the Closing Date and as set forth in the title insurance policy delivered to the Agency pursuant to Section 2.4 of the Installment Sale Agreement;

any mechanic's, workmen's, repairmen's, materialmen's, contractors', warehousemen's, carriers', suppliers' or vendors' Lien or right in respect thereof if payment is not yet due and payable, all if and to the extent permitted by Section 6.7 of the Installment Sale Agreement;

any mortgage, Lien, security interest or other encumbrance that exists in favor of the Credit Provider Agent or the Development Lenders Agent, or to which the Credit Provider Agent shall consent (if it shall advise the Trustee in writing that the consent of the Credit Provider Agent is required under the Credit Provider Documents), but in each of which case shall satisfy the Agency Protection Protocol;

Liens arising by reason of good faith deposits with the Company in connection with the tenders, leases of real estate, bids or contracts (other than contracts for the payment of money), deposits by the Company to secure public or statutory obligations, or to secure, or in lieu of, surety, stay or appeal bonds, and deposits as security for the payment of taxes or assessments or other similar charges;

any Lien arising by reason of deposits with, or the giving of any form of security to, any governmental agency or any body created or approved by law or governmental regulation for any purpose at any time as required by law or governmental regulation as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Company to maintain self-insurance or to participate in any funds established to cover any insurance risks or in connection with workmen's compensation, unemployment insurance, old age pensions or other social security, or to share in the privileges or benefits required for companies participating in such arrangements;

any judgment Lien against the Company, so long as such judgment Lien is fully covered by insurance or the finality of such judgment is being contested in good faith and execution thereon is stayed;

any Lien on property, if such Lien equally and ratably secures the obligations of the Company under the Installment Sale Agreement;

any purchase money security interest in movable personal property;

leases that (A) relate to property of the Company that is of a type that is customarily the subject of such leases, and (B) contain lease terms and conditions customarily contained in such leases;

Liens on property due to rights of governmental entities or third party payors for recoupment of excess reimbursement paid;

a Lien with respect to the operation of the Facility arising under applicable law or regulation by reason of a grant received by the Company from a governmental agency;

any subordination and non-disturbance agreements in favor of the Hotel Operator in connection with its services under the Hotel Operating Agreements; and

the rights of hotel guests of the Facility to occupancy of their hotel rooms within the Facility and use of the Facility in the ordinary course of business of the operation of a hotel.

Permitted Transfers shall mean the sale, assignment or transfer of any direct or indirect equity interests in the Company or any Company Parent (i) to a trust established by Joseph Moinian or any immediate family members of Joseph Moinian (meaning for the purposes hereof, a parent, spouse, child, grandchild, brother, sister, niece or nephew) for any other immediate family members of Joseph Moinian provided Joseph Moinian Controls the Company and Joseph Moinian or such transferor Controls such trust (or if Joseph Moinian dies, then provided that the individual who Controls such trust is a member of the immediate family of Joseph Moinian and that, within sixty (60) days of death, an Approved Developer continues to construct the Project to completion until the Project Completion Date in accordance with the Installment Sale Agreement and the other Project Documents pursuant to an agreement between the Company and such Approved Developer reasonably acceptable to the Agency, the Trustee and the Credit Provider Agent), (ii) to an immediate family member of Joseph Moinian by will or intestacy on the death of such transferor provided that Joseph Moinian Controls the Company, or if Joseph Moinian dies, then provided that within sixty (60) days from the date of his death the Company causes an Approved Developer to continue to construct the Project to completion until the Project Completion Date in accordance with the Installment Sale Agreement and the other Project Documents pursuant to an agreement between the Company and such Approved Developer reasonably acceptable to the Agency, the Trustee and the Credit Provider Agent, and (iii) to the immediate family members of Joseph Moinian provided Joseph Moinian Controls the Company (or if Joseph Moinian dies, then provided that, within sixty (60) days of death, an Approved Developer continues to construct the Project to completion until the Project Completion Date in accordance with the Installment Sale Agreement and the other Project Documents pursuant to an agreement between the Company and such Approved Developer

reasonably acceptable to the Agency, the Trustee and the Credit Provider Agent) and no such transfer results in more than 49% of the direct and indirect interests in the Company being owned by a transferee otherwise not permitted pursuant to the preceding clauses (i) and (ii); and provided, further, that (1) the Agency, the Trustee and the Credit Provider Agent shall receive not less than twenty (20) days' prior written notice of such proposed sale or transfer, and (2) the Company shall pay or cause to be paid any and all costs imposed or incurred as a result of any such sale, assignment or transfer, including without limitation, any transfer taxes.

Person shall mean any individual or any entity, whether a trustee, corporation, general partnership, limited liability company, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority, governmental instrumentality or otherwise.

Principal(s) shall mean, with respect to any Person that is an entity, the chief executive officer, the chief financial officer and the chief operating officer of such entity, or a person or persons holding equivalent positions.

Principal Account shall mean the special trust account of the Bond Fund so designated, established pursuant to Section 5.01 of the Indenture.

Principal Payment Date shall mean any date upon which the principal amount of Series 2007 Bonds is due under the Indenture, including the Maturity Date, any Serial Maturity Date, any Redemption Date, or the date the maturity of any Series 2007 Bond is accelerated pursuant to the terms of the Indenture or otherwise.

Priority Amounts: shall mean (a) for so long as the Credit Enhancement shall be in effect, (1) any amounts drawn under the Credit Enhancement, (2) the proceeds of the Series 2007 Bonds and any Additional Bonds (other than refunding Additional Bonds) and accrued interest thereon, (3) any other amounts (including (i) insurance and condemnation proceeds, investment earnings on any of the amounts set forth in clauses (1) and (2) above or on any insurance and condemnation proceeds, and (ii) any installment purchase payments by the Company with respect to the Series 2007 Bonds) which have been on deposit in the Bond Fund or the Installment Purchase Payments Fund for at least 124 days prior to their payment to Bondholders (in the case of principal payments and interest thereon) or for at least 124 days prior to the giving of notice of redemption (in the case of redemption payments and accrued interest with respect thereto), during or prior to either of which 124 day periods no Act of Bankruptcy of the Credit Provider, the Company (or any Affiliate thereof) or the Agency (or any "insider", as defined in the United States Bankruptcy Code, of the Company or the Agency (an "Insider")) shall have occurred, and (4) any such other amounts with respect to which the Trustee receives a written opinion of counsel experienced in bankruptcy matters to the effect that payment of such amounts to Bondholders will not constitute voidable preferences under the Federal Bankruptcy Code; and (b) during any period a Credit Enhancement is not in effect, any moneys held by the Trustee in any Fund or Account under the Indenture and available to pay principal, Redemption Price or interest on the Series 2007 Bonds. Notwithstanding anything herein to the contrary, any amounts deposited in the Bond Fund or the Installment Purchase Payments Fund by an Insider shall be held for at least one (1) year and one (1) day prior to their payment to Bondholders.

Project shall mean the construction of an approximately 132,000 square foot 217-key hotel to constitute a portion of a separate condominium unit upon completion, to be located at 123 Washington Street, New York, New York.

Project Completion Date shall mean that date upon which the Project shall be completed as evidenced by the delivery of the certificate of an Authorized Representative of the Company as required by Section 2.2 of the Installment Sale Agreement.

Project Costs shall mean:

(i) all costs of engineering and architectural services with respect to the Project and the Facility, including the costs of test borings, surveys, estimates, plans and specifications and for supervising construction, as well as for the performance of all other duties required by or consequent upon the proper construction of the Facility in connection with the completion of the Project;

(ii) all costs paid or incurred for labor, materials, services, supplies, machinery, equipment and other expenses and to contractors, suppliers, builders and materialmen in connection with the completion of the Facility;

(iii) all costs of contract bonds and of insurance that may be required or necessary during the period of Facility construction;

(iv) the interest on the Bonds during the construction of the Facility;

(v) all costs of title insurance as provided in Section 2.4 of the Installment Sale Agreement;

(vi) all costs in connection with the acquisition of any component of the Facility;

(vii) the payment of the Costs of Issuance with respect to the Bonds;

(viii) all costs which the Company shall be required to pay under the terms of any contract or contracts for the completion of the Facility, including any amounts required to reimburse the Company for advances made for any item otherwise constituting a Project Cost or for any other costs incurred and for work done which are properly chargeable to the Facility;

(ix) all other costs and expenses relating to the completion of the Facility or the issuance of a Series of Bonds;

provided, however, Project Costs shall not include: (a) fees or commissions of real estate brokers; (b) moving expenses; (c) the costs of acquiring and installing any item of personalty when such personalty is not both (1) a tangible asset with a useful life of one year or more and (2) not incorporated into the Facility as a structural component or is capable of being removed from the Facility and used at another site or building; (d) all costs of landscaping, including but not limited to the costs of acquiring and planting shrubs, trees, flowers, lawns and other plants, as well as the cost of landscape design services; (e) fees incurred by the Company in connection

with the management or operation of the Facility; (f) the cost of acquiring and leasing rolling stock; (g) the cost of acquiring and installing fine art, objects d'art, or any other similar decorative items; (h) the cost of any item of fixture, improvement or equipment, unless such item is either (1) a structural component of the Facility, or (2) not capable of being removed from its location and used at another site or building; (i) any costs relating to the acquisition of the land upon which the Facility is to be constructed or any air rights or other interests with respect thereto; (j) any costs related to the residential, retail or restaurant portion of the Development or any other aspect of the Development not constituting part of the luxury hotel for which the Series 2007 Bonds are being issued; (k) any fee or like payment to the developer of the Project or any Affiliate thereof; (l) any cost relating to the sales, marketing or advertising of the residential component of the Development, including any office created for purposes thereof; (m) any cost relating to movable items of personalty; and (n) to the extent not already covered in any of the foregoing, operating and other working capital costs. All Project Costs shall be subject to the Project Cost Protocol.

Project Costs Protocol shall mean that protocol described in the "Description of Project Costs Protocol" in the appendices attached hereto by which common costs to both the Development and the Facility will be allocated to determine eligibility as Project Costs.

Project Development Rights shall mean the right of the Company to proceed with the Project under the Act, and, in so doing, to develop, own and construct the Facility for use and occupancy as described in the Installment Sale Agreement, and to utilize the proceeds of the Agency's Bonds for such purpose, subject in each case to the limitations therefor set forth in the Installment Sale Agreement and the other Project Documents.

Project Documents shall mean, collectively, the Security Documents, the Condominium Documents, any Credit Provider Mortgage, the Development Security Documents, the Hotel Operating Agreements, the Remarketing Agreement, the Indemnity Guaranty Agreement, the Auction Agreement and the Broker-Dealer Agreement.

Project Fund shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

Purchase Date shall mean (i) for a Series 2007 Bond in the Daily Mode or the Weekly Mode, any Business Day selected by the Beneficial Owner or Holder of said Series 2007 Bond pursuant to the provisions of Section 2.10 of the Indenture, and (ii) any Mandatory Purchase Date.

Purchase Fund shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

Purchase Price shall mean an amount equal to the principal amount of any Series 2007 Bonds purchased on any Purchase Date, plus accrued interest to the Purchase Date (unless the Purchase Date is an Interest Payment Date, in which case the Purchase Price shall not include accrued interest, which shall be paid in the normal course).

Qualified Investments shall mean, if and to the extent the same are at the time legal for investment of funds held under this Indenture:

Government Obligations;

(2) Obligations issued or guaranteed by any of the following instrumentalities or agencies of the United States of America:

- (1) Federal Home Loan Bank System
- (2) Export-Import Bank of the United States
- (3) Federal Financing Bank
- (4) Government National Mortgage Association
- (5) Farmers Home Administration
- (6) Federal Home Loan Mortgage Corporation
- (7) Federal Housing Administration
- (8) Private Export Funding Corporation
- (9) Tennessee Valley Authority.

(3) Commercial paper, rated at least P-1 by Moody's or at least A-1 by Standard & Poor's, issued by a corporation or banking Company organized under the laws of the United States of America or any state thereof;

(4) Direct and general long-term obligations of any state of the United States of America to which the full faith and credit of the state is pledged and that are rated in either of the two highest rating categories by Moody's and Standard & Poor's;

(5) Direct and general short-term obligations of any state of the United States to which the full faith and credit of the state is pledged and that are rated in the highest rating category by Moody's and Standard & Poor's;

(6) Interest-bearing demand or time deposits with or certificates of deposit issued by a national banking association or a state bank or trust company that is a member of the Federal Deposit Insurance Corporation ("FDIC") and that are (a) continuously and fully insured by the FDIC, or (b) with a bank that has outstanding debt, or which is a subsidiary of a holding company which has outstanding debt, rated in either of the two highest rating categories by Moody's and Standard & Poor's, or (c) continuously and fully secured by obligations of the type described in (i) and (ii) above that have a market value at all times at least equal to the principal amount of the deposit and are held by the Trustee or its agent or, in the case of uncertified securities, are registered in the name of the Trustee as pledge;

(7) Repurchase agreements, the maturity of which are less than thirty (30) days, entered into (a) with a bank or trust company rated P1 by Moody's and rated A-1 by S&P, organized under the laws of the United States or with a national banking association, insurance

company, or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York and which is a member of the Security Investors Protection Corporation, or (b) with a dealer which is rated P-1 by Moody's and rated A-1 by S&P. The repurchase agreement must be continuously and fully secured by obligations of the type described in (i), (ii), (iii), (iv) or (v) above which have a fair market value, exclusive of accrued interest, at least equal to the amount invested in the repurchase agreement and which are held by the Trustee or its agent or, in the case of uncertificated securities, are registered in the name of the Trustee as pledge;

(8) Money market mutual funds with assets in excess of \$2,000,000,000 investing in obligations of the type specified in (i), (ii), (iii), (iv), (v) or (iv) above, including such funds for which the Trustee or an affiliate of the Trustee serves as investment advisor, administrator, shareholder, servicing agent and/or custodian or sub-custodian, notwithstanding that (1) the Trustee charges and collects fees and expenses from such funds for services rendered, (2) the Trustee charges and collects fees and expenses for services rendered pursuant to this Indenture and (3) services performed for such funds and pursuant to this Indenture may converge at any time;

(9) Investment agreements or guaranteed investment contracts with any company (including insurance companies) or financial institution; provided that such agreements or contracts, or the senior unsecured long term debt obligations of the issuer (or of any unconditional guarantor) are rated, at the time such agreements or contracts are entered into, in one of the two highest Rating Categories (disregarding any gradations within such Categories); and

(10) Any other investment permitted by law and approved in writing by the Credit Provider Agent, so long as the Credit Enhancement is then in effect.

Rate Determination Date shall mean any date on which the interest rate on the Series 2007 Bonds shall be determined, which, (i) in the case of the Flexible Mode, shall be the first day of an Interest Period; (ii) in the case of the Daily Mode, shall be each Business Day commencing with the first day (which must be a Business Day) the Bonds become subject to the Daily Mode; (iii) in the case of the Weekly Mode, (A) each Wednesday or, if Wednesday is not a Business Day, then the Business Day next succeeding such Wednesday, and (B) not later than the Business Day preceding a Mode Change Date, a Substitution Date or a Mandatory Purchase Date specified in clause (viii) of the definition of Mandatory Purchase Date; (iv) in the case of the Term Rate Mode, shall be a Business Day no earlier than fifteen (15) Business Days and no later than the Business Day next preceding the first day of an Interest Period, as determined by the Remarketing Agent; and (v) in the case of the Fixed Rate Mode, shall be a date determined by the Remarketing Agent which shall be at least one (1) Business Day prior to the Mode Change Date.

Rating Agency shall mean any of S&P, Moody's or Fitch and such other nationally recognized securities rating agency as shall have awarded a rating to the Series 2007 Bonds.

Rating Category shall mean one of the generic rating categories of either S&P, Moody's or Fitch without regard to any refinement or gradation of such rating by a numerical modifier or otherwise.

Rating Confirmation Notice shall mean a notice from Moody's, S&P or Fitch, as appropriate, confirming that the rating on the Series 2007 Bonds will not be lowered or withdrawn (other than a withdrawal of a short-term rating upon a change to a Long-Term Mode) as a result of the action proposed to be taken.

Rebate Fund shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

Recognized Mezzanine Lender shall mean a Person who purports to be a Mezzanine Lender (y) who shall have sent a written notice to the Agency and the Trustee stating that it is a Mezzanine Lender and setting forth the address to receive notices from the Agency and the Trustee, and (z) as to who the current records of the Agency and/or the Trustee, as applicable, indicate to continue to be a Mezzanine Lender.

Recognized Mortgage Lender shall mean a Person who purports to be a Mortgage Lender (y) who shall have sent a written notice to the Agency and the Trustee stating that it is a Mortgage Lender and setting forth the address to receive notices from the Agency and the Trustee, and (z) as to who the current records of the Agency and/or the Trustee, as applicable, indicate to continue to be a Mortgage Lender.

Record Date shall mean (i) with respect to Series 2007 Bonds in a Short-Term Mode or an Auction Mode, the last Business Day before an Interest Payment Date; and (ii) with respect to Series 2007 Bonds in a Long-Term Mode, the fifteenth (15th) day (whether or not a Business Day) of the month next preceding each Interest Payment Date.

Redemption Account shall mean the special trust account of the Bond Fund so designated, established pursuant to Section 5.01 of the Indenture.

Redemption Date shall mean the date fixed for redemption of Bonds subject to redemption in any notice of redemption given in accordance with the terms of the Indenture.

Redemption Price shall mean an amount equal to the principal of and premium, if any, on the Bonds to be paid on the Redemption Date.

Reimbursement Agreement shall mean any reimbursement agreement, loan agreement, credit agreement, line of credit agreement, standby purchase agreement or other agreement, by and between the Credit Provider, the Credit Provider Agent, the Liquidity Provider or the Liquidity Provider Agent, as applicable, and the Company, pursuant to which the Company is obligated to make payments, directly or indirectly to reimburse the payments made under a Credit Enhancement and/or a Liquidity Facility.

Related Security Documents shall mean all Security Documents other than this Indenture.

Remarketing Account shall mean the special trust account of the Purchase Fund so designated, established pursuant to Section 5.01 of the Indenture.

Remarketing Agent shall mean (a) initially, Goldman, Sachs & Co., New York, New York, and (b) thereafter, any Person meeting the qualifications of and designated from time to time to act as Remarketing Agent for the Series 2007 Bonds under Section 14.01 of the Indenture.

Remarketing Agreement shall mean, as of any date, the Remarketing Agreement between the Company and the then Remarketing Agent.

Representation Letter shall mean the Blanket Issuer Letter of Representations from the Agency and the Trustee to DTC with respect to the Series 2007 Bonds.

Required Disclosure Statement shall mean that certain Required Disclosure Statement in the form of Schedule F attached to the Installment Sale Agreement and made a part thereof. Each certification, representation and warranty set forth in a Required Disclosure Statement delivered to the Agency shall be deemed incorporated by reference into the Installment Sale Agreement as if fully set forth therein.

Responsible Officer shall mean, with respect to the Trustee, any officer within the Corporate Trust Office of the Trustee, including any vice-president, any assistant vice-president, any assistant secretary, any assistant treasurer or other officer of the Corporate Trust Office of the Trustee customarily performing functions similar to those performed by any of the above designated officers, who has direct responsibility for the administration of the trust granted in this Indenture.

S&P shall mean Standard & Poor's Ratings Services, a division of The McGraw Hill Companies, Inc., a corporation organized and existing under the laws of the State, its successors and their assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, by notice to the other Notice Parties.

Securities Depository shall mean The Depository Trust Company, 711 Stewart Avenue, Garden City, New York 11530, Fax -516/227-4039 or 4190 and such other securities depository as the Agency may designate in a certificate of an Authorized Representative of the Agency delivered to the Trustee.

Security Documents shall mean, collectively, the Installment Sale Agreement, the IDA Lease, the Indenture, the Guaranty Agreement, the Credit Enhancement, the Liquidity Facility and the Tax Regulatory Agreement.

Serial Bonds shall mean the Series 2007 Bonds maturing on the Serial Maturity Dates, as determined pursuant to Section 2.08(b)(v) of the Indenture.

Serial Maturity Dates shall mean the dates on which the Serial Bonds mature, as determined pursuant to Section 2.08(b)(v) of the Indenture.

Serial Payments shall mean the payments to be made in payment of the principal of the Serial Bonds on the Serial Maturity Dates.

Series shall mean all of the Bonds designated as being of the same Series authenticated and delivered on original issuance in a simultaneous transaction, and any Bonds thereafter authenticated and delivered in lieu thereof or in substitution therefor pursuant to this Indenture.

Series 2007 Bonds shall mean the \$50,000,000 Variable Rate Demand Liberty Revenue Bonds, Series 2007 (123 Washington LLC Project) of the Agency issued, executed, authenticated and delivered under the Indenture.

Series 2007 Shortfall shall have the meaning assigned to such term by Section 5.06(c) of the Indenture.

Short-Term Mode shall mean the Daily Mode, the Weekly Mode or the Flexible Mode.

Sinking Fund Installment shall mean the amount required by the Indenture as payable on a single future date for the retirement of any Outstanding Bonds of a Series which are expressed to mature after such future date, but does not include any amounts payable by reason only of the maturity of a Bond.

Special Record Date shall mean, with respect to any Series 2007 Bond, the date established by the Trustee in connection with the payment of overdue interest on such Series 2007 Bond pursuant to Section 2.02 of the Indenture.

State shall mean the State of New York.

Substitution Date shall mean the date upon which an Alternate Credit Enhancement or Alternate Liquidity Facility is scheduled to be substituted for the Credit Enhancement or Liquidity Facility then in effect.

Supplemental Indenture shall mean any indenture supplemental to or amendatory of the Indenture, executed and delivered by the Agency and the Trustee in accordance with Article XI of the Indenture.

Tax Regulatory Agreement shall mean the Tax Regulatory Agreement, dated the Closing Date, from the Agency and the Company to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Tender Agent shall mean initially, U.S. Bank National Association, New York, New York, and any successor tender agent appointed pursuant to Section 13.01 of the Indenture.

Tender Notice shall mean a notice delivered by Electronic Means or in writing that states (i) the principal amount of such Series 2007 Bond to be purchased pursuant to the Indenture, (ii) the Purchase Date on which such Series 2007 Bond is to be purchased,

(iii) applicable payment instructions with respect to the Series 2007 Bonds being tendered for purchase and (iv) an irrevocable demand for such purchase.

Tender Notice Deadline shall mean (i) during the Daily Mode, 11:00 a.m., New York City time, on any Business Day and (ii) during the Weekly Mode, 5:00 p.m., New York City time, on the Business Day seven (7) days prior to the applicable Purchase Date.

Term Rate shall mean the per annum interest rate for the Series 2007 Bonds in the Term Rate Mode determined pursuant to Section 2.05(a) of the Indenture.

Term Rate Mode shall mean the Mode during which the Series 2007 Bonds bear interest at the Term Rate.

Term Rate Period shall mean the period from (and including) the Mode Change Date or the date of initial issuance of the Series 2007 Bonds, as applicable, to (but excluding) the last day of the first period that the Series 2007 Bonds shall be in the Term Rate Mode as established by the Company for the Series 2007 Bonds pursuant to Section 2.08(a)(i) of the Indenture and, thereafter, the period from (and including) the beginning date of each successive Interest Rate Period selected for the Series 2007 Bonds by the Company pursuant to Section 2.05(a) of the Indenture while the Series 2007 Bonds are in the Term Rate Mode to (but excluding) the commencement date of the next succeeding Interest Period, including another Term Rate Period. Except as otherwise provided in the Indenture, an Interest Period for the Series 2007 Bonds in the Term Rate Mode must be at least 180 days in length.

Trustee shall mean U.S. Bank National Association, New York, New York, in its capacity as Trustee under the Indenture, and its successors in such capacity and their assigns hereafter appointed in the manner provided in the Indenture.

Trust Estate shall mean all property, interests, revenues, funds, contracts, rights and other security granted to the Trustee under the Security Documents.

Underwriter shall mean, in the case of the Series 2007 Bonds, Goldman, Sachs & Co., New York, New York.

Unit or Units shall mean each individual condominium unit (including any residential, commercial, restaurant or hotel unit), together with any appurtenant interest thereto in the common elements, created by the submission of the Development to the provisions of the Condominium Act in accordance with the Condominium Documents.

United States Bankruptcy Code shall mean the United States Bankruptcy Reform Act of 1978, as amended from time to time, or any substitute or replacement legislation.

Unremarketed Series 2007 Bonds Rate shall mean (i) if a Liquidity Facility was delivered in connection with the Series 2007 Bonds, the Alternate Rate plus three percent (3%) per annum, and (ii) if a Liquidity Facility was not delivered in connection with the Series 2007 Bonds, the Maximum Interest Rate, provided that in no event shall either such rate exceed the highest rate allowed by law.

Variable Rate Mode shall mean the Short-Term Mode or the Term Rate Mode.

Weekly Mode shall mean the Mode during which the Series 2007 Bonds bear interest at the Weekly Rate.

Weekly Rate shall mean the per annum interest rate on the Series 2007 Bonds in the Weekly Mode determined pursuant to Section 2.04 of the Indenture.

Weekly Rate Period shall mean the period during which a Series 2007 Bond in the Weekly Mode shall bear a Weekly Rate, which shall be the period commencing on Thursday of each week to and including Wednesday of the following week, except (i) if the Series 2007 Bonds are issued in the Weekly Mode, in which case the first Weekly Rate Period shall be from the date of initial issuance of the Series 2007 Bonds to and including the Wednesday of the following week, (ii) in connection with a conversion to the Weekly Rate, in which case the first Weekly Rate Period shall be from the Mode Change Date to and including the Wednesday of the following week, (iii) in the case of a Substitution Date or a Mandatory Purchase Date specified above in clause (viii) of the definition of Mandatory Purchase Date, in which case the Weekly Rate Period prior to the Substitution Date or such Mandatory Purchase Date shall end on the day before the Substitution Date or such Mandatory Purchase Date and a new Weekly Rate Period shall commence on the Substitution Date or such Mandatory Purchase Date and end on the Wednesday of the following week, and (iv) in connection with a conversion from the Weekly Mode, the last Weekly Rate Period shall end on the day next preceding the Mode Change Date.

Yield shall have the meaning assigned to such term in the Tax Regulatory Agreement.

DESCRIPTION OF FACILITY

The volume of space within the parcel of land hereinafter described as shown in white on the drawings annexed hereto:

ALL THAT CERTAIN plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:-

BEGINNING at the corner formed by the intersection of the Northerly side of Carlisle Street with the Easterly side of Washington Street;

RUNNING THENCE Northerly along the Easterly side of Washington Street, 117 feet to the corner formed by the intersection of the said Easterly side of Washington Street with the Southerly side of Albany Street;

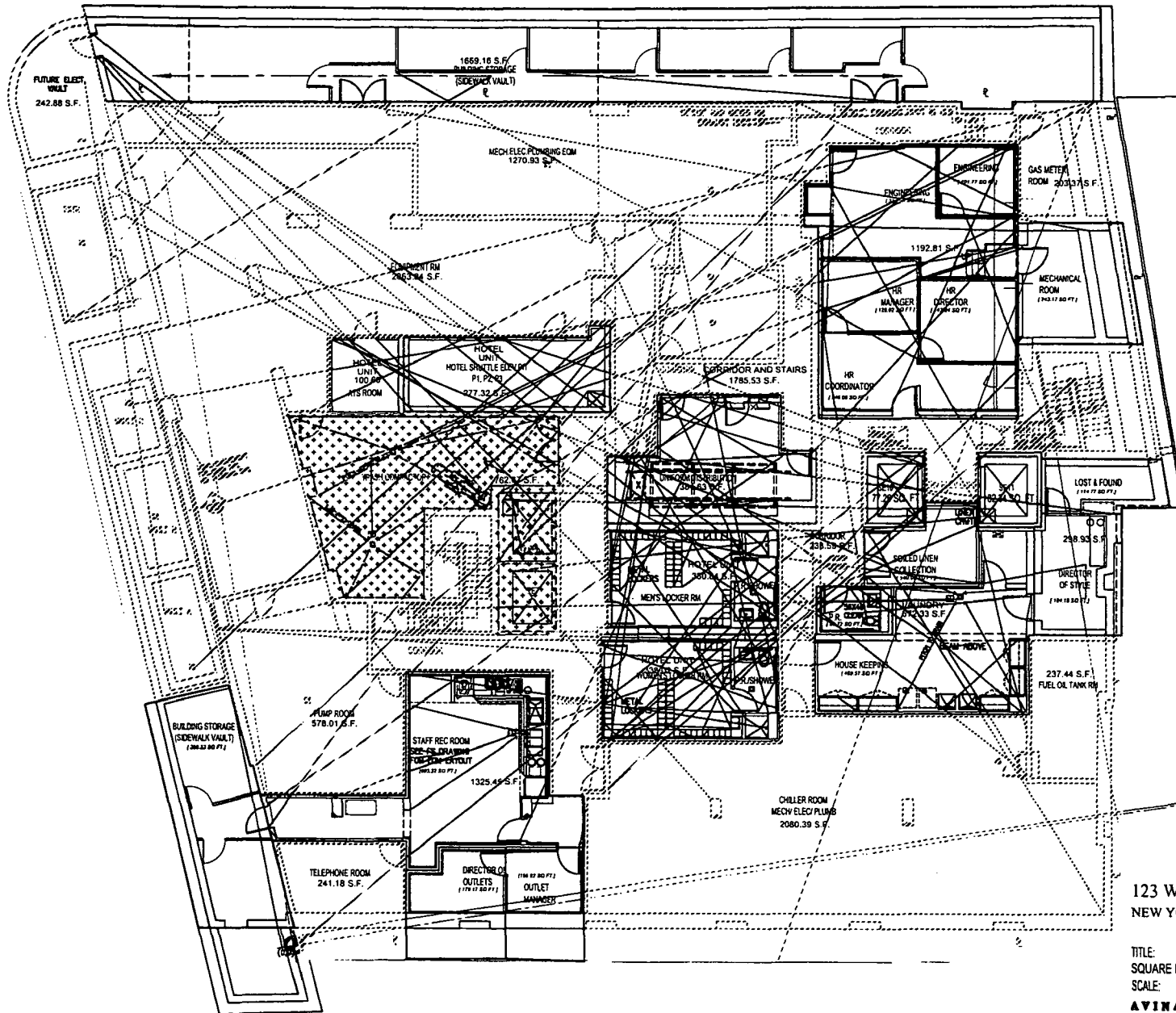
THENCE Easterly along the Southerly side of Albany Street, 135 feet 9-1/4 inches, more or less, to the Westerly face of the Westerly wall of the building on the premises adjoining on the East known as Hazon Building;

THENCE Southerly along the said Westerly face of said wall, and along a line which forms an angle of 80 degrees 45 minutes 40 seconds on its Easterly side with the said Southerly side of Albany Street, 56 feet 1-1/2 inches; to the northerly line of land conveyed by the Markham Realty Corporation to Alfrieda Braun, by deed dated July 6, 1920, recorded July 7, 1920 in Liber 3166 page 363.

THENCE Westerly along a line which forms an angle of 82 degrees 22 minutes 10 seconds on its Northerly side with the last mentioned course, 7 feet 10 inches to the Westerly boundary line of the last mentioned deed;

THENCE again Southerly along a line forming an angle of 91 degrees 55 minutes 10 seconds on its Easterly side with the last mentioned course, being the Westerly line of the last mentioned deed and part of the way through a party wall, 58 feet 1 inch to the Northerly side of Carlisle Street and;

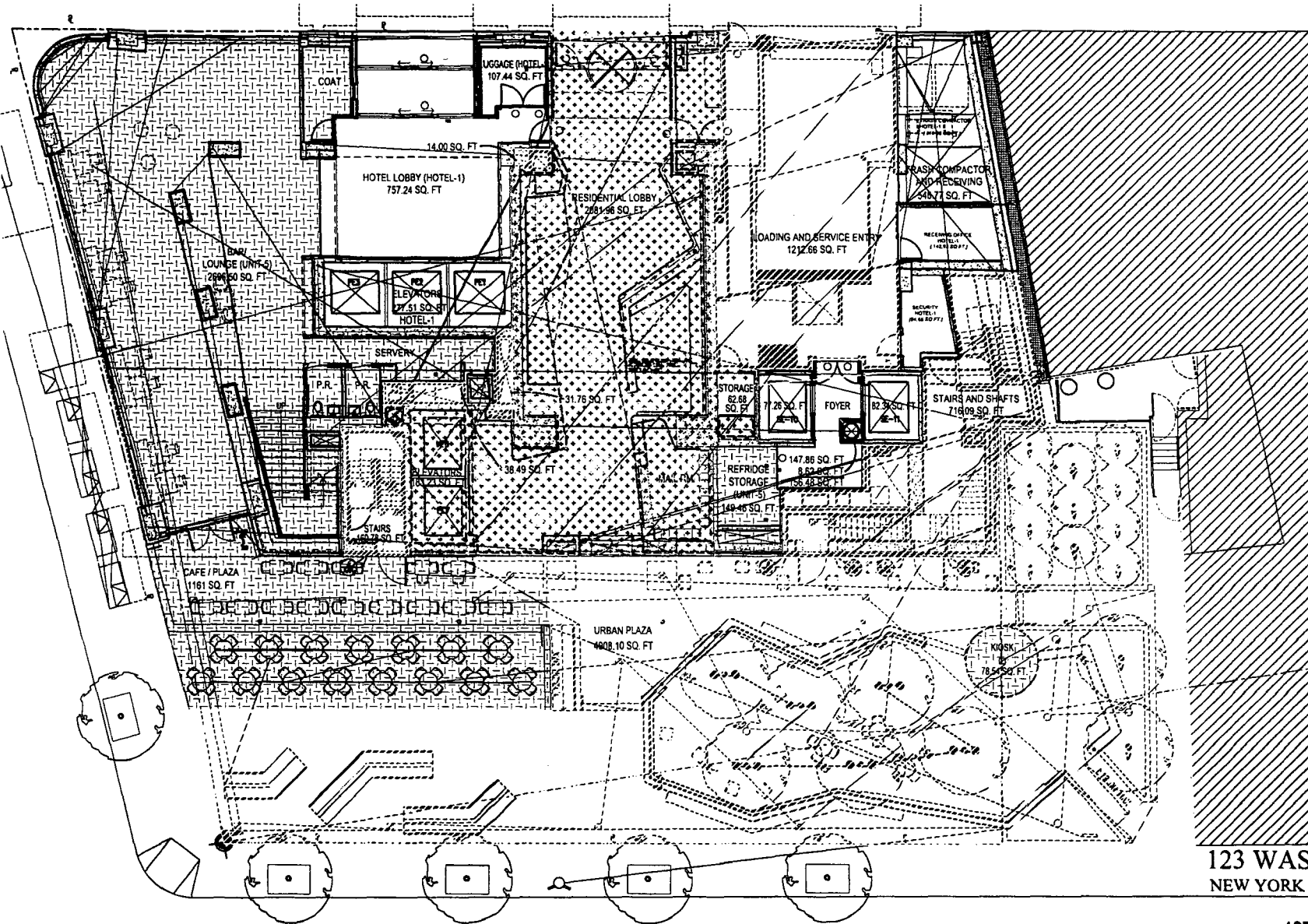
THENCE Westerly along the said Northerly side of Carlisle Street, 108 feet 5-1/2 inches to the corner first mentioned, at the point or place of BEGINNING.
















- RESIDENTIAL COMMON
- GENERAL COMMON
- EXCLUDED PREMISES
- RESTAURANT (UNIT-5)
- RESIDENTIAL
- HOTEL

- 101107 UPDATE LEGEND
- 101007 UPDATE LEGEND
- 091007 ADD INDIVIDUAL ROOM AREAS
- 091507 UPDATE LEGEND
- 051607 GENERAL UPDATE CURRENT SCHEME
- 041807 ADJUST COLOR FOR RESIDENTIAL COMMON

123 WASHINGTON STREET Project: 04
 NEW YORK CITY
CELLAR FLOOR PLAN
 TITLE:
 SQUARE FOOTAGE ANALYSIS 041207
 SCALE: N.T.S. DATE: 01/11/07 REF: A103
AVINASH K. MAHOTRA ARCHITECT



-  RESIDENTIAL COMMON
-  GENERAL COMMON
-  EXCLUDED PREMISES
-  RESTAURANT (UNIT-5)
-  RESIDENTIAL
-  HOTEL

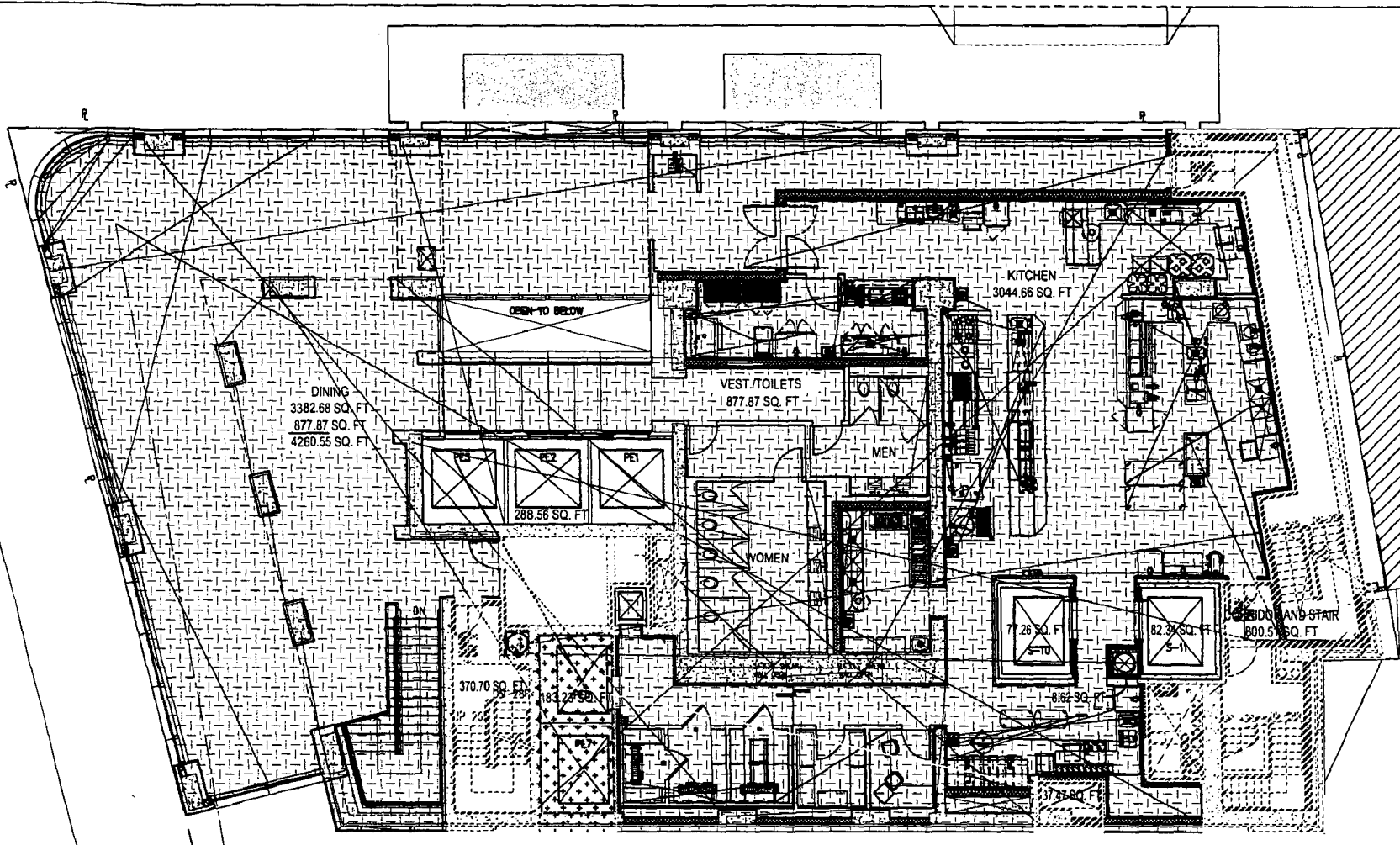
-  10/11/07 UPDATE LEGEND
-  10/19/07 UPDATE LEGEND AND KIOSK
-  06/22/07 DESIGNATE RESIDENTIAL STORAGE
-  06/18/07 ADD INDIVIDUAL ROOM AREAS
-  06/15/07 UPDATE LEGEND INCLUDE URBAN PLAZA AND KIOSK
-  05/04/07 GENERAL UPDATE TO CURRENT SCHEME
-  04/18/07 ADJUST COLOR FOR RESIDENTIAL COMMON







123 WASHINGTON STREET
 NEW YORK CITY






1ST FLOOR
 TITLE: SQUARE FOOTAGE ANALYSIS 04/12/07
 SCALE: N.T.S. DATE: 01/11/07

Project: 0473
 REF: A104
 1

AVINASH K. MALEOTRA ARCHITECTS



-  RESIDENTIAL COMMON
-  GENERAL COMMON
-  EXCLUDED PREMISES
-  RESTAURANT (UNIT-5)
-  RESIDENTIAL
-  HOTEL

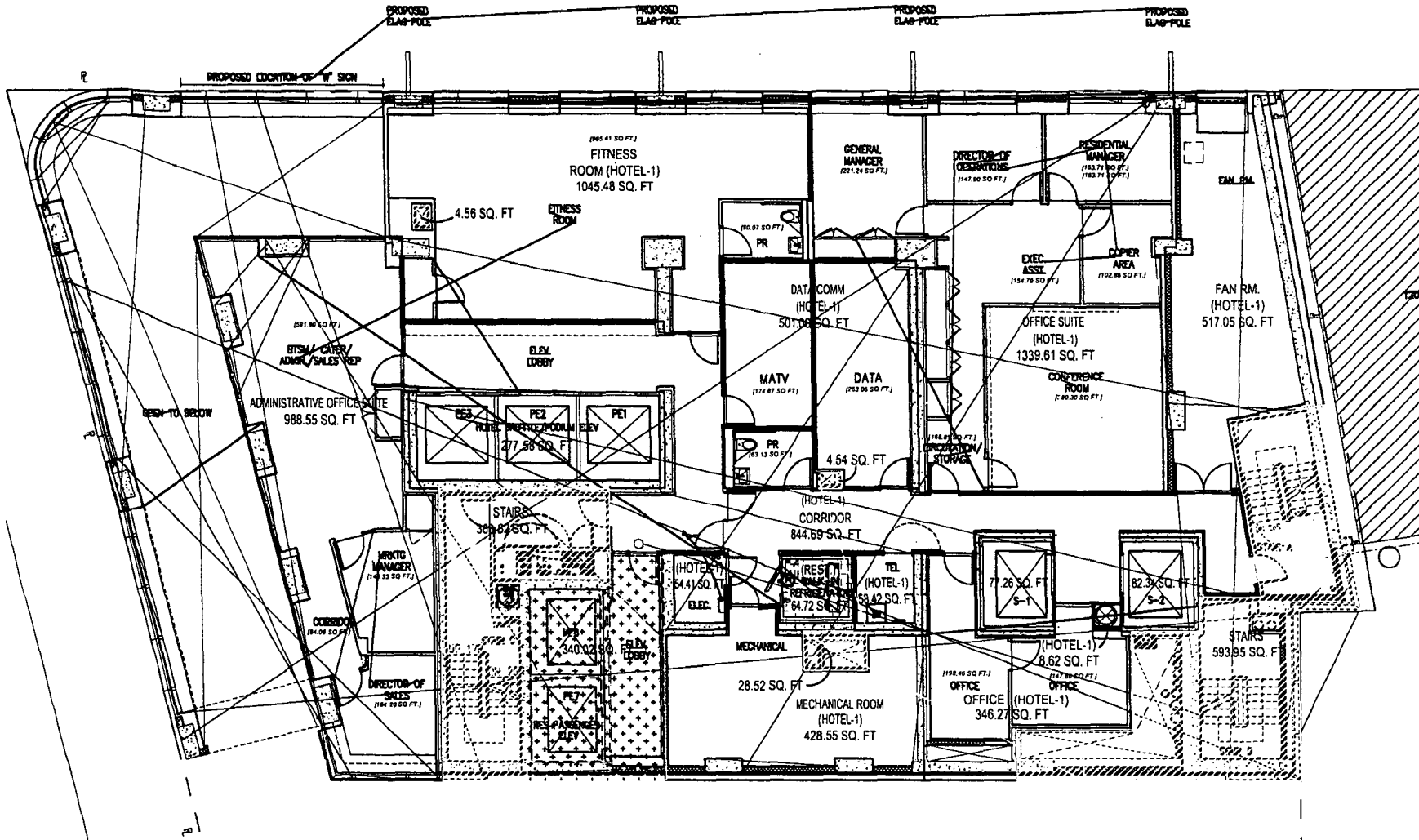
-  10/11/07 UPDATE LEGEND
-  10/10/07 UPDATE LEGEND
-  06/15/07 UPDATE LEGEND
-  05/04/07 GENERAL UPDATE TO CURRENT SCHEME
-  04/18/07 ADJUST COLOR FOR RESIDENTIAL COMMON







123 WASHINGTON STREET
 NEW YORK CITY







2nd FLOOR
 TITLE:
 SQUARE FOOTAGE ANALYSIS
 SCALE: 3/32" = 1'-0" DATE: 01/11/07

Project	0473
2	
REF:	A105

AVINASH K. MALHOTRA ARCHITECTS



-  RESIDENTIAL COMMON
-  GENERAL COMMON
-  EXCLUDED PREMISES
-  RESTAURANT (UNIT-5)
-  RESIDENTIAL
-  HOTEL

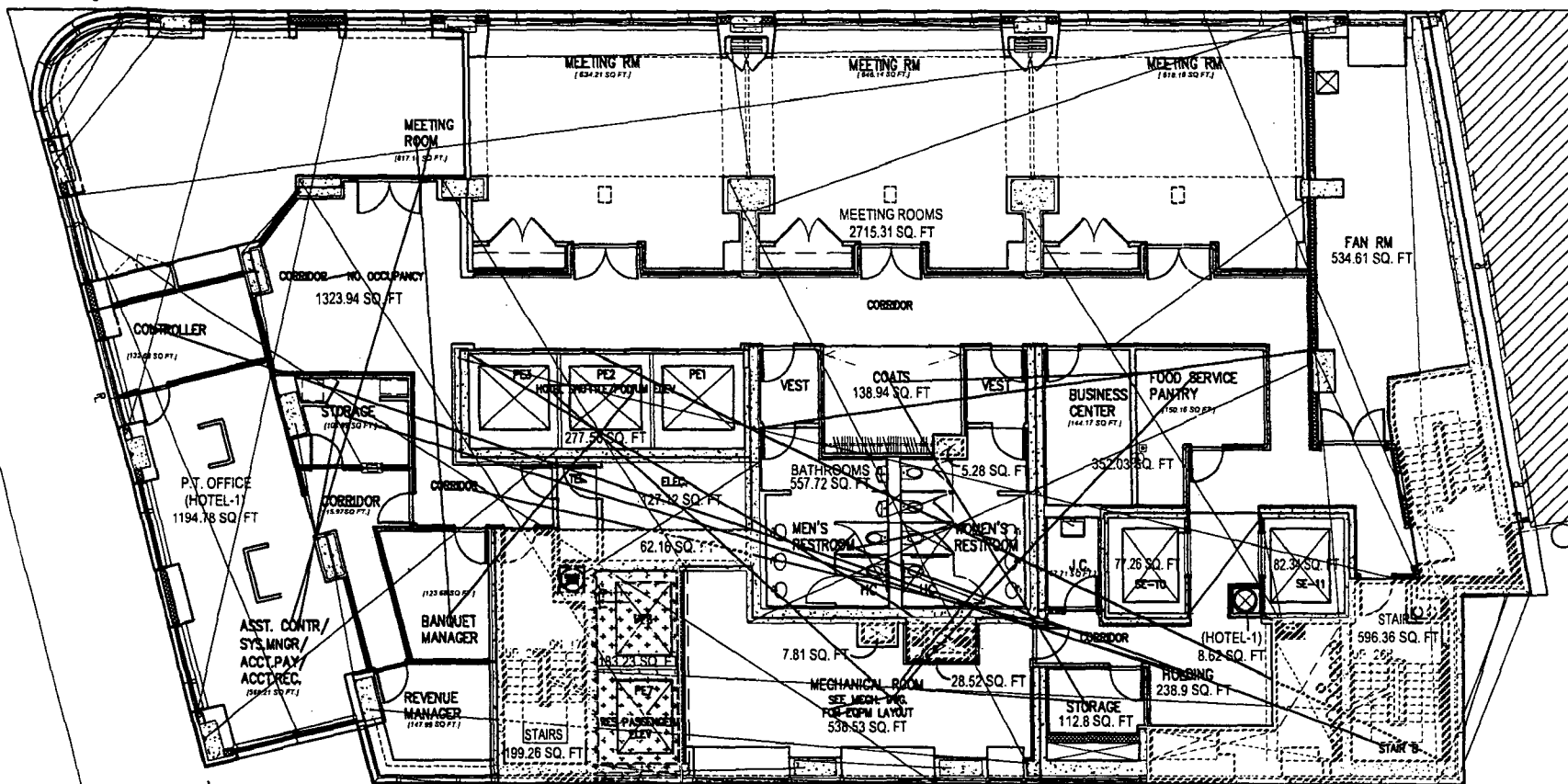
-  10/11/07 UPDATE LEGEND
-  10/10/07 UPDATE LEGEND
-  06/18/07 ADD INDIVIDUAL ROOM AREAS
-  06/15/07 UPDATE LEGEND
-  05/04/07 GENERAL UPDATE TO CURRENT SCHEME
-  04/18/07 ADJUST COLOR FOR RESIDENTIAL COMMON

123 WASHINGTON STREET
NEW YORK CITY

TITLE: **3rd FLOOR**
SQUARE FOOTAGE ANALYSIS
SCALE: 3/32" = 1'-0" DATE: 01/11/07

Project: 0473
3
REF: A106

AVINASH K MALHOTRA ARCHITECTS



- RESIDENTIAL COMMON
- GENERAL COMMON
- EXCLUDED PREMISES
- RESTAURANT (UNIT-5)
- RESIDENTIAL
- HOTEL

- 10/1/07 UPDATE LEGEND
- 10/10/07 UPDATE LEGEND
- 06/18/07 ADD INDIVIDUAL ROOM AREAS INCORPORATE SEATING
- 06/15/07 UPDATE LEGEND
- 05/16/07 UPDATE MEETING ROOM OFFICE SUITE AREAS
- 05/04/07 GENERAL UPDATE TO CURRENT SCHEME
- 04/18/07 ADJUST COLOR FOR RESIDENTIAL COMMON

123 WASHINGTON STREET
NEW YORK CITY

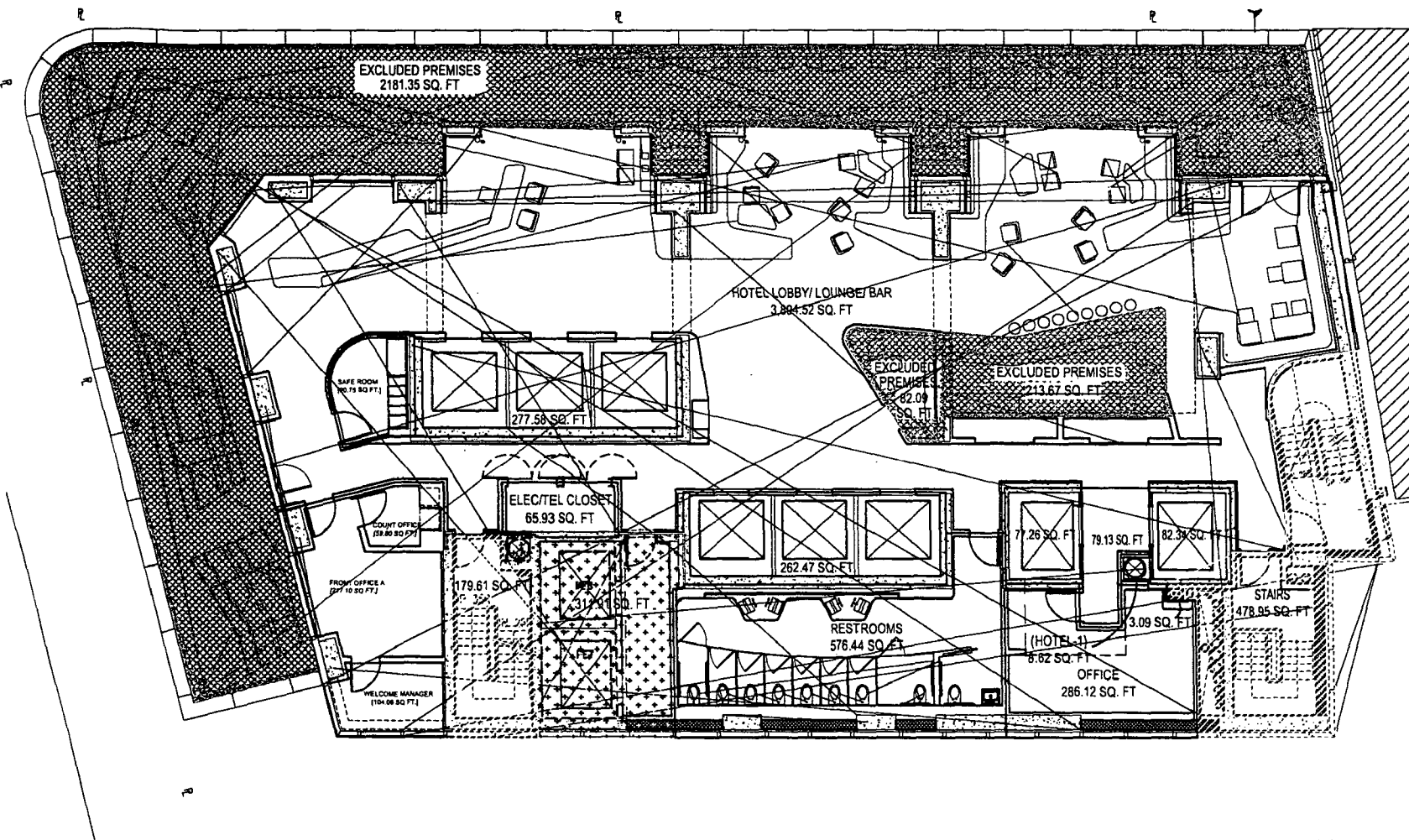
Project: 0473







4







REF: A107

TITLE: 4th FLOOR
SQUARE FOOTAGE ANALYSIS
SCALE: 3/32" = 1'-0" DATE: 01/11/07

AVINASH K MALHOTRA ARCHITECTS



-  RESIDENTIAL COMMON
-  GENERAL COMMON
-  EXCLUDED PREMISES
-  RESTAURANT (UNIT-5)
-  RESIDENTIAL
-  HOTEL

-  10/11/07 UPDATE LEGEND AND EXCLUDED PREMISES
-  10/10/07 UPDATE LEGEND AND GENERAL UPDATE TO CURRENT SCHEME
-  06/18/07 ADD INDIVIDUAL ROOM AREAS
-  06/15/07 UPDATE LEGEND
-  05/04/07 GENERAL UPDATE TO CURRENT SCHEME
-  04/18/07 ADJUST COLOR FOR RESIDENTIAL COMMON


123 WASHINGTON STREET
NEW YORK CITY

Project 0473

5

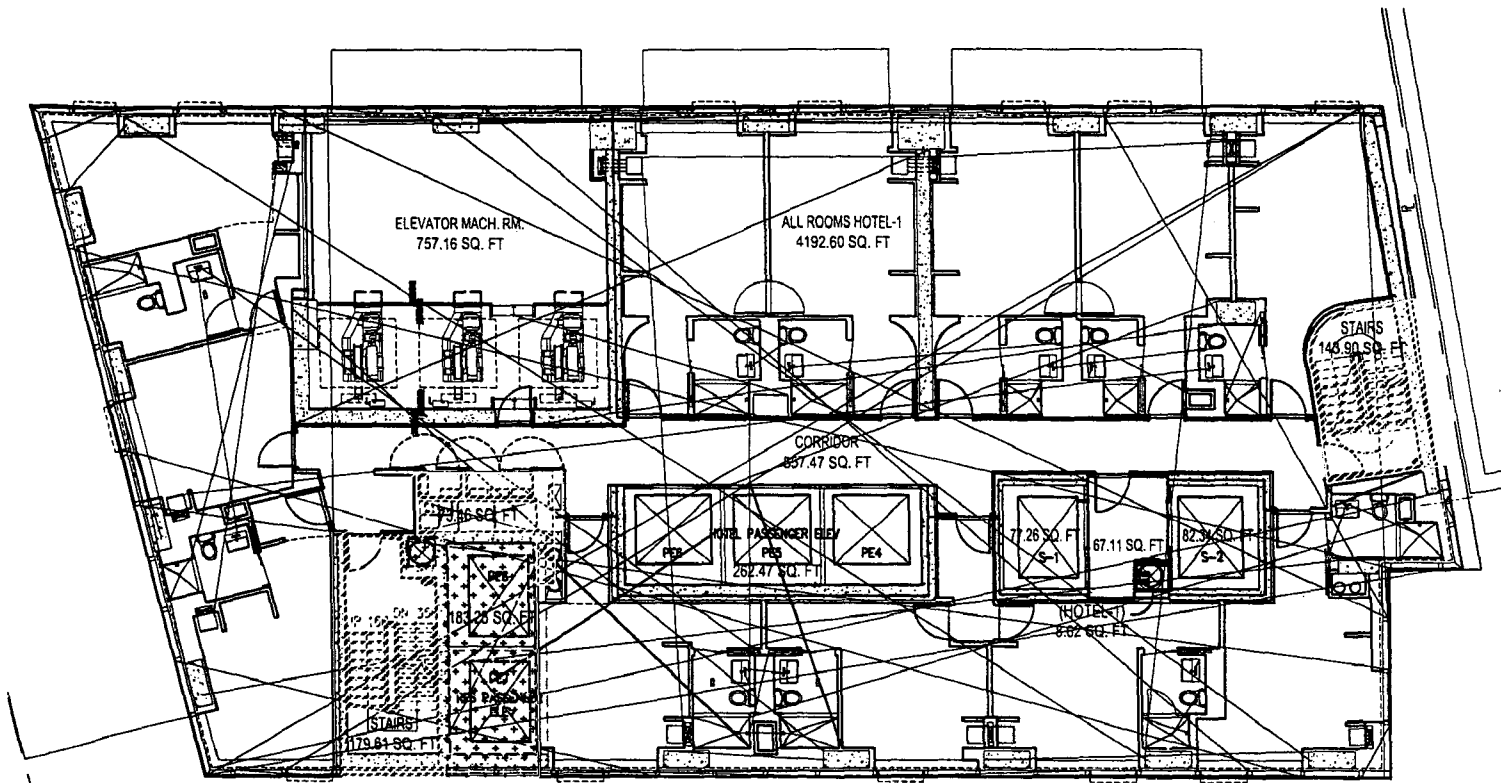
REF: A108







5th FLOOR





TITLE: SQUARE FOOTAGE ANALYSIS 04/12/07 

SCALE: 3/32" = 1'-0" DATE: 01/11/07

AVINASH K MALHOTRA ARCHITECTS



-  RESIDENTIAL COMMON
-  GENERAL COMMON
-  EXCLUDED PREMISES
-  RESTAURANT (UNIT-5)
-  RESIDENTIAL
-  HOTEL

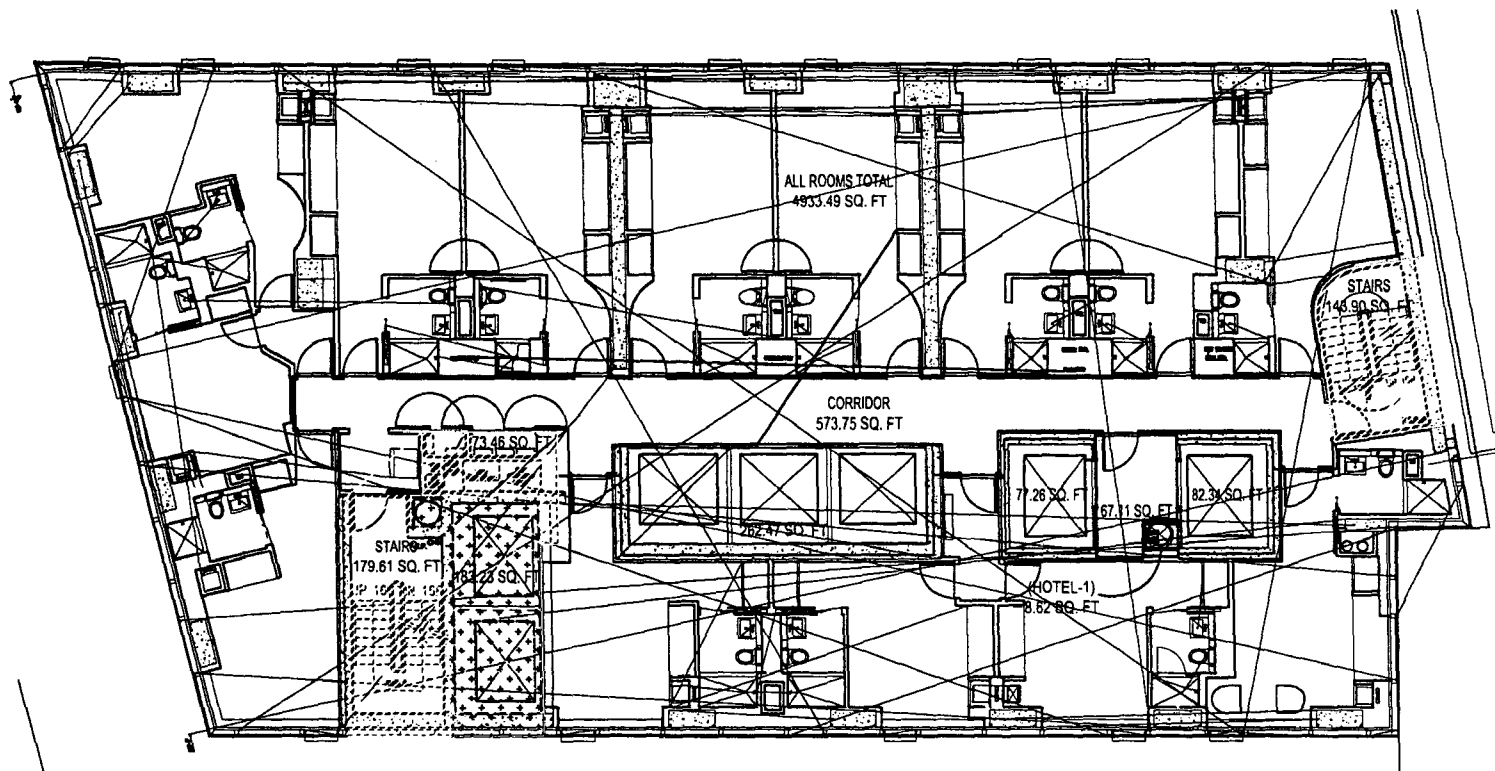
-  10/11/07 UPDATE LEGEND
-  10/10/07 UPDATE LEGEND
-  06/15/07 UPDATE LEGEND
-  04/18/07 ADJUST COLOR FOR RESIDENTIAL COMMON







123 WASHINGTON STREET
NEW YORK CITY





6th FLOOR
TITLE:
SQUARE FOOTAGE ANALYSIS
SCALE: 3/32" = 1'-0" DATE: 01/11/07

Project:	0473
6	
REF:	A109

AVINASH K MALHOTRA ARCHITECTS



-  RESIDENTIAL COMMON
-  GENERAL COMMON
-  EXCLUDED PREMISES
-  RESTAURANT (UNIT-5)
-  RESIDENTIAL
-  HOTEL

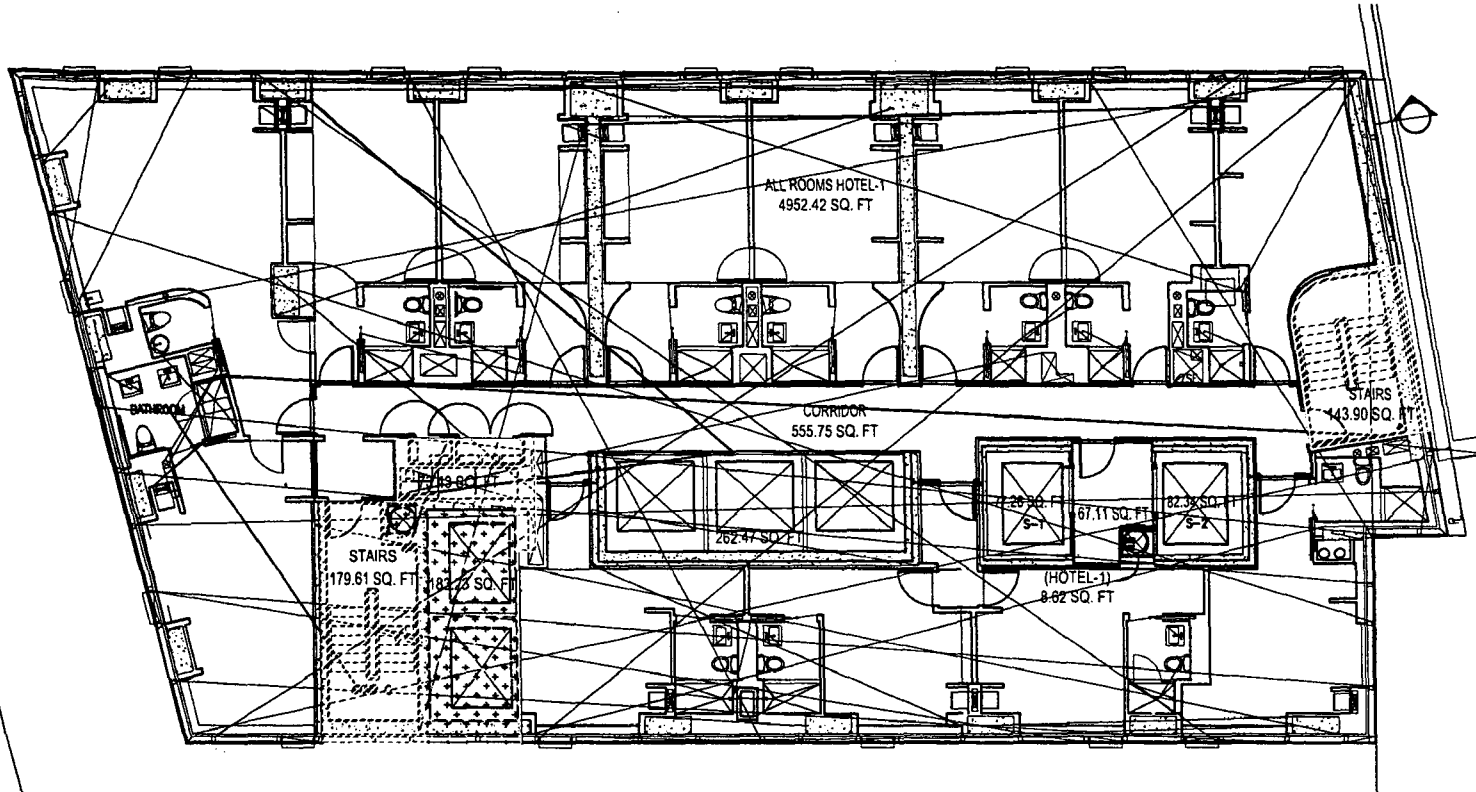
-  10/1/07 UPDATE LEGEND
-  10/10/07 UPDATE LEGEND
-  06/15/07 UPDATE LEGEND
-  04/18/07 ADJUST COLOR FOR RESIDENTIAL COMMON







123 WASHINGTON STREET
NEW YORK CITY





FLOORS 7-11, 14-21
TITLE: HOTEL ROOMS
SQUARE FOOTAGE ANALYSIS
SCALE: 3/32" = 1'-0" DATE: 01/11/07

Project	0473
7	
REF:	A110

AVINASH K MALHOTRA ARCHITECTS



-  RESIDENTIAL COMMON
-  GENERAL COMMON
-  EXCLUDED PREMISES
-  RESTAURANT (UNIT-5)
-  RESIDENTIAL
-  HOTEL

-  10/1/07 UPDATE LEGEND
-  10/10/07 UPDATE LEGEND
-  06/15/07 UPDATE LEGEND
-  04/18/07 ADJUST COLOR FOR RESIDENTIAL COMMON

123 WASHINGTON STREET
NEW YORK CITY

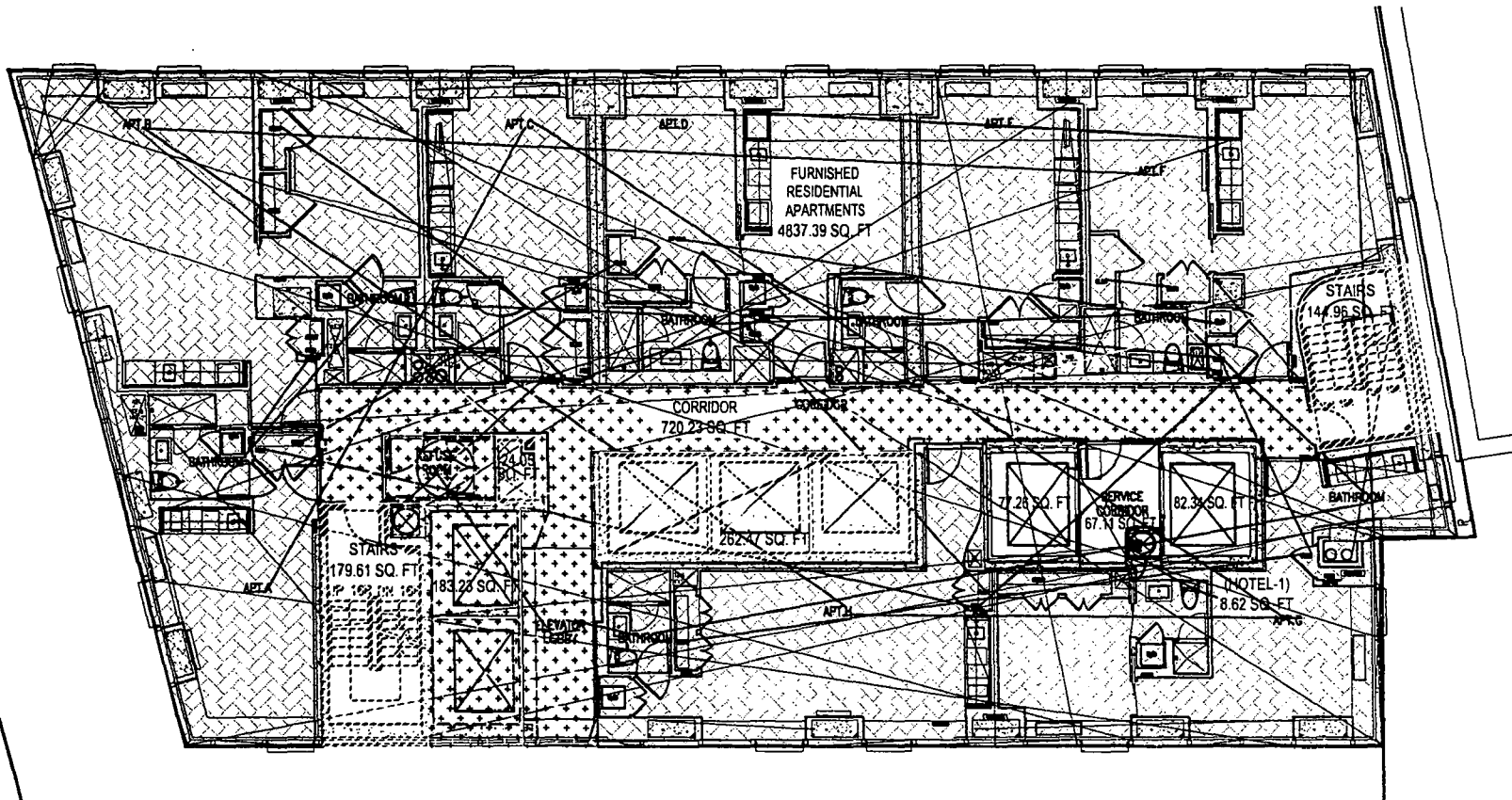
FLOORS 12 and 13
HOTEL ROOMS
TITLE: HOTEL ROOMS
SQUARE FOOTAGE ANALYSIS
SCALE: 3/32" = 1'-0" DATE: 01/11/07







Project 0473






8

REF: A111

AVINASH K MALHOTRA ARCHITECTS



-  RESIDENTIAL COMMON
-  GENERAL COMMON
-  EXCLUDED PREMISES
-  RESTAURANT (UNIT-5)
-  RESIDENTIAL
-  HOTEL

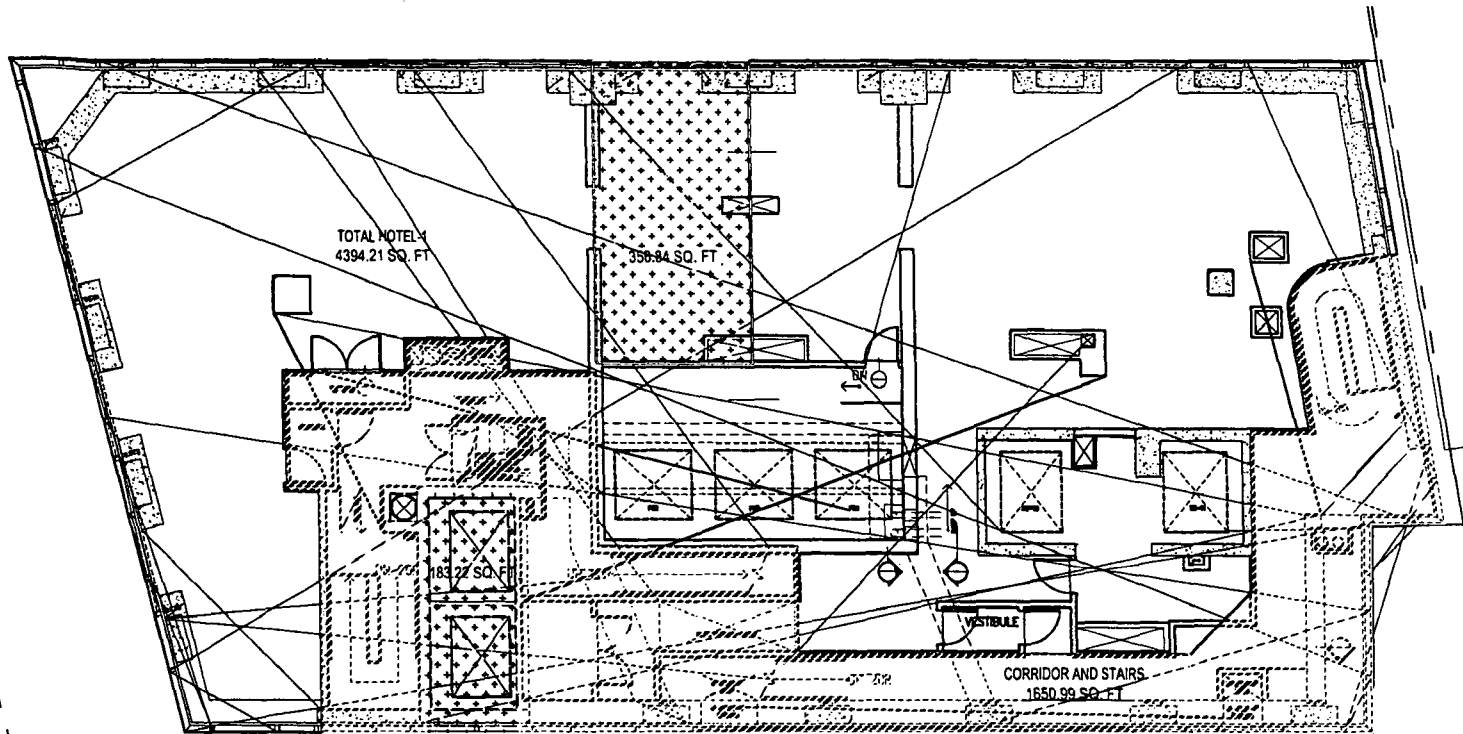
-  10/11/07 UPDATE LEGEND
-  10/10/07 UPDATE LEGEND
-  06/21/07 CHANGE "ALL HOTEL APARTMENTS" TO "FURNISHED RESIDENTIAL APARTMENTS"
-  06/15/07 UPDATE LEGEND ADJUST RESIDENTIAL COLOR
-  04/18/07 ADJUST COLOR FOR RESIDENTIAL COMMON







123 WASHINGTON STREET
NEW YORK CITY





FLOORS 22 THRU' 29
TITLE: FURNISHED RESIDENTIAL APARTMENTS
SQUARE FOOTAGE ANALYSIS
SCALE: 3/32" = 1'-0" DATE: 01/11/07

Project	0473
9	
REF:	A112

AVINASH K MALHOTRA ARCHITECTS



-  RESIDENTIAL COMMON
-  GENERAL COMMON
-  EXCLUDED PREMISES
-  RESTAURANT (UNIT-5)
-  RESIDENTIAL
-  HOTEL

-  10/11/07 UPDATE LEGEND
-  10/10/07 UPDATE LEGEND
-  09/15/07 UPDATE LEGEND
-  04/18/07 ADJUST COLOR FOR RESIDENTIAL COMMON

123 WASHINGTON STREET
NEW YORK CITY

FLOOR 31
TITLE: MECHANICAL FLOOR
SQUARE FOOTAGE ANALYSIS
SCALE: 3/32" = 1'-0" DATE: 01/11/07

Project: 0473
11
REF: A114

AVINASH K MALHOTRA ARCHITECTS

DESCRIPTION OF EXCLUDED PREMISES

The Hotel Unit will be comprised of those portions shown in white on the drawings annexed to the Description of Facility, and the Facility will not include the Excluded Premises which may be included in the Hotel Unit. The Excluded Premises are the areas shown in orange and marked "Excluded Premises" on such drawings.

SCHEDULE A

PROJECT COMPLETION CERTIFICATE OF THE COMPANY
AS REQUIRED BY SECTION 2.2 OF THE INSTALLMENT SALE AGREEMENT

THE UNDERSIGNED HEREBY CERTIFIES that she/he is an Authorized Representative (as defined in the Installment Sale Agreement referred to below) of 123 Washington LLC, a Delaware limited liability company (the "Company"), and this certificate is being delivered in accordance with the provisions of Section 2.2 of that certain Installment Sale Agreement and Assignment of Lease, dated as of October 1, 2007 (the "Installment Sale Agreement"), between the New York City Industrial Development Agency (the "Agency") and the Company, and FURTHER CERTIFIES ON BEHALF OF THE COMPANY THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Installment Sale Agreement):

(i) the Project was completed on _____;

(ii) the Project has been completed substantially in accordance with the plans and specifications therefor and all labor, services, materials and supplies used therefor have been paid for (except for any costs not exceeding \$100,000 in the aggregate (i) not now due and payable or (ii) the liability for payment of which is being contested or disputed in good faith by the Company);

(iii) all other facilities relative to the Facility necessary in connection with the Project have been completed, and all costs and expenses incurred in connection therewith have been paid (except for any costs not exceeding \$100,000 in the aggregate (i) not now due and payable or (ii) the liability for payment of which is being contested or disputed in good faith by the Company);

(iv) all property of the Facility is subject to the Installment Sale Agreement;

(v) in accordance with all applicable Legal Requirements, the Facility has been made ready for occupancy, use and operation for its intended purposes;

(vi) the amount required in my opinion for the payment of any remaining part of the costs of the Project is \$ _____;

(vii) the Rebate Amount as calculated in accordance with the Tax Regulatory Agreement is \$ _____, and [the Trustee is hereby directed to withdraw such amount from the Earnings Fund and deposit it in the Rebate Fund] [accompanying this certificate is the amount of \$ _____ which the Trustee is directed to deposit in the Rebate Fund];

(viii) attached hereto as Exhibit A is a temporary or permanent certificate of occupancy, if required by applicable law, and any and all permissions, approvals, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by the Installment Sale Agreement;

(ix) attached hereto as Exhibit B are releases of mechanics' liens by all contractors and materialmen who supplied work, labor, services, materials or supplies in connection with the Project (or, to the extent that any such costs shall be the subject of a bona fide dispute, attached hereto is evidence that such costs have been appropriately bonded or a copy of a surety or security posted by the Company in an amount at least equal to the amount of such costs);

(x) attached hereto as Exhibit D is a certificate of the Board of Fire Underwriters with respect to the Facility;

(xi) attached hereto as Exhibit E is evidence that the Facility is not subject to notices of material violations filed in the office of any governmental agency;

(xii) attached hereto as Exhibit F is evidence of the issuance of all necessary, unconditional and final permits with respect to the Facility from all appropriate governmental agencies, and evidence that the Facility is in compliance with all applicable building, zoning and other governmental codes and regulations, and that all requisite licenses, permits and approvals that may be required so as to permit the use and operation of the Facility by the Company and any uses necessary or incidental thereto.

This certificate (x) is given without prejudice to any rights of the Company against third parties which may exist on the date hereof or which may subsequently come into being, and (y) is given only for the purposes of Section 2.2(b) of the Installment Sale Agreement and Section 5.02 of the Indenture. No Person other than the Agency, the Credit Provider and the Trustee may benefit from this certificate.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this _____ day of _____, _____.

123 WASHINGTON LLC

By: _____
Name:
Title:



EMPLOYMENT & BENEFITS REPORT

For the Fiscal Year July 1, 20__ – June 30, 20__ (FY ' __)

In order to comply with State and Local Law reporting requirements, the Company is required to complete and return this form to NYCIDA, 110 William Street, Attention: Compliance, New York, NY 10038 no later than **July 15, 20__**. PLEASE SEE THE ATTACHED INSTRUCTIONS AND DEFINITIONS OF CAPITALIZED TERMS USED ON THIS PAGE.

Please provide your NAICS Code (see <http://www.naics.com/search.htm>)

If you cannot determine your NAICS Code, please indicate your industry type

- 1. Number of permanent Full-Time Employees as of June 30, 20__
- 2. Number of non-permanent Full-Time Employees as of June 30, 20__
- 3. Number of permanent Part-Time Employees as of June 30, 20__
- 4. Number of non-permanent Part-Time Employees as of June 30, 20__
- 5. Number of Contract Employees as of June 30, 20__
- 6. Total Number of employees of the Company and its Affiliates included in Items 1, 2, 3 and 4

For each employee included in this item 6, attach the NYS-45 Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return for the period including June 30, 20__.

- 7. Number of employees included in item 6 above who reside in the City of New York.....
- 8. Do the Company and its Affiliates offer health benefits to all Full-Time Employees? Yes No
Do the Company and its Affiliates offer health benefits to all Part-Time Employees? Yes No

If the answer to item 6 above is fewer than 250 employees, please skip questions 9 through 13 and continue with questions 14 through 17.

- 9. Number of employees in Item 6 who are "Exempt"
- 10. Number of employees in Item 6 who are "Non-Exempt"
- 11. Number of employees in item 10 that earn up to \$25,000 annually.....
- 12. Number of employees in item 10 that earn \$25,001 - \$40,000 annually
- 13. Number of employees in item 10 that earn \$40,001 - \$50,000 annually

For Items 14 through 16, indicate the value of the benefits realized at Project Locations during FY ' __.

- 14. Value of sales and use tax exemption benefits \$
- 15. Value of Commercial Expansion Program ("CEP") benefits..... \$
- 16. Value of Relocation and Employment Assistance Program ("REAP") benefits \$

17a. Were physical improvements made to any Project Location during FY ' __ at a cost exceeding 10% of the current assessed value of the existing improvements at such Project Location?..... Yes No

17b. If the Company and/or its Affiliates have applied for Industrial and Commercial Incentive Program ("ICIP") benefits for new physical improvements at Project Location(s) please provide the ICIP application number(s) #

Certification: I, the undersigned, an authorized officer or principal owner of the Company/Affiliate/Tenant, hereby certify to the best of my knowledge and belief, that all information contained in this report is true and complete. This form and information provided pursuant hereto may be disclosed to the New York City Economic Development Corporation ("NYCEDC") and New York City Industrial Development Agency ("NYCIDA") and may be disclosed by NYCEDC and NYCIDA in connection with the administration of the programs of NYCEDC and/or NYCIDA and/or the City of New York; and, without limiting the foregoing, such information may be included in (x) reports prepared by NYCEDC pursuant to New York City Charter Section 1301 et. seq., (y) other reports required of NYCIDA or NYCEDC, and (z) any other reports or disclosure required by law.

Entity Name:

Signature By: Date:

Name (print): Title:



DEFINITIONS & INSTRUCTIONS

For the Fiscal Year July 1, 20__ – June 30, 20__ (FY ' __)

"Affiliate" is (i) a business entity in which more than fifty percent is owned by, or is subject to a power or right of control of, or is managed by, an entity which is a party to a Project Agreement, or (ii) a business entity that owns more than fifty percent of an entity which is a party to a Project Agreement or that exercises a power or right of control of such entity.

"Company" includes any entity that is a party to a Project Agreement.

"Contract Employee" is a person who is an independent contractor (i.e., a person who is not an "employee"), or is employed by an independent contractor (an entity other than the Company, an Affiliate or a Tenant), who provides services at a Project Location.

"Financial Assistance" is any of the following forms of financial assistance provided by or at the direction of NYCIDA and/or NYCEDC: a loan, grant, tax benefit and/or energy benefit pursuant to the Business Incentive Rate (BIR) or New York City Public Utility Service (NYCPUS) program.

"Full-Time Employee" is an employee who works at least 35 hours per week at a Project Location.

"Part-Time Employee" is an employee who works less than 35 hours per week at a Project Location.

"Project Agreement" is any agreement or instrument pursuant to which an entity received or receives Financial Assistance.

"Project Location" is any location (a) with regard to which Financial Assistance has been provided to the Company and/or its Affiliates during the fiscal year reporting period covered by the Employment and Benefits Report, or (b) that is occupied by the Company and/or its Affiliates at which such entities have employees who are eligible to be reported per the terms of the Project Agreement with the Company and/or its Affiliates.

"Tenant" is a tenant or subtenant (excluding the Company and its Affiliates) that leases or subleases facilities from the Company or its Affiliates (or from tenants or subtenants of the Company or its Affiliates) at any Project Location.

ITEM INSTRUCTIONS

For each Project Agreement, please submit one report that covers (i) the Company and its Affiliates and (ii) Tenants and subtenants of Tenants at all Project Locations covered by the Project Agreement

Each Tenant must complete items 1-5, 15 and 16 on this form with regard to itself and its subtenants and return it to the Company. The Company must include in its report information collected by the Company from its Affiliates and Tenants. The Company must retain for six (6) years all forms completed by its Affiliates and Tenants and at NYCIDA's request must permit NYCIDA upon reasonable notice to inspect such forms and provide NYCIDA with a copy of such forms. The Company must submit to NYCIDA copies of this form completed by each Tenant.

- 1- 4. Items 1, 2, 3 and 4 must be determined as of June 30, 20__ and must include all permanent and non-permanent Full-Time Employees and Part-Time Employees at all Project Locations, including, without limitation, those employed by the Company or its Affiliates and by Tenants and subtenants of Tenants at the Project Locations. **Do not include Contract Employees in Items 1, 2, 3 and 4.**
5. Report all Contract Employees providing services to the Company and its Affiliates and Tenants and subtenants of Tenants at all Project Locations.
- 6-14. Report information requested only with respect to the Company and its Affiliates at all Project Locations. For item 6, report only the permanent and non-permanent Full-Time Employees and Part-Time Employees of the Company and its Affiliates. Do not report employees of Tenants and subtenants of Tenants. Do not report Contract Employees.
9. Indicate the number of employees included in item 6 who are classified as "Exempt", as defined in the federal Fair Labor Standards Act. Generally, an Exempt employee is not eligible for overtime compensation.
10. Indicate the number of employees included in item 6 who are classified as "Non-Exempt", as defined in the federal Fair Labor Standards Act. Generally, a Non-Exempt employee is eligible for overtime compensation.
14. Report all sales and use tax exemption benefits realized at all Project Locations by the Company and its Affiliates and granted by virtue of the exemption authority of NYCIDA or the City of New York. Do not include any sales and use tax savings realized under the NYS Empire Zone Program or through a 501(c)3 exemption.

15. Report all CEP benefits received by the Company and its Affiliates and any Tenants and subtenants of Tenants at all Project Locations. CEP is a package of tax benefits designed to help qualified businesses to relocate or expand in designated relocation areas in New York City. For more information regarding CEP, please visit <http://www.nyc.gov/dof>.
16. Report all REAP benefits received by the Company and its Affiliates and any Tenants and subtenants of Tenants at all Project Locations. REAP is designed to encourage qualified businesses to relocate employees to targeted areas within New York City. REAP provides business income tax credits based on the number of qualified jobs connected to the relocation of employees. For more information regarding REAP, please visit <http://www.nyc.gov/dof>.





SUBTENANT OCCUPANCY SURVEY

*Please complete a separate occupancy survey for each project building.

As of December 31, 20__

PROJECT COMPANY: _____

PROJECT LOCATION: _____

<u>Occupant</u>	<u>Name of Occupant's Principal</u>	<u>Square Footage Occupied</u>	<u>Affiliate Relationship to Company, if any</u>	<u>Date Occupancy Began</u>	<u>Date Occupancy Will End</u>
1.					
2.					
3.					
4.					
5.					

(Please continue on a separate page if necessary)

_____ Check here if no Persons other than the Company occupy, sublease and/or license space at the Project Location

TOTAL SQUARE FOOTAGE AT THIS PROJECT LOCATION: _____ square feet

I, the undersigned, hereby certify that the information reported above is true, correct and complete as of December 31, 20__ and that the occupants listed above are the only occupants, subtenants and/or licensees at the Project Location. I understand that this information is submitted pursuant to the requirements of the Agreement.

Name: _____

Title: _____

Signature: _____

Date: _____

Phone Number: _____

Email: _____

(Please print CLEARLY)

Please fax the completed request to: NYCIDA Compliance Dept. (212) 618-5738
 Or mail to: NYCIDA, Attention: Compliance Dept, 110 William Street, New York, NY 10038

Questions? Please call the NYCIDA Compliance Hotline: (212) 312-3963 or Email: ComplianceReporting@nycedc.com



LOCATION & CONTACT INFORMATION

For the Fiscal Year July 1, 20__ – June 30, 20__

Eligible Project Location(s):

Please provide the information required below for the location or locations that are receiving benefits.

Project Address	Floor	Borough	Zip Code	Type of Benefit (Pilot, Sales Tax, etc.)
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*Please use additional pages if necessary *

Please provide below current Project Contact Information: (Please print CLEARLY)

Project Name: _____

Name: _____ Title: _____

Address: _____

Phone: _____ Fax: _____ E-mail: _____

Signature: _____

Backup Contact Information:

Name: _____ Title: _____ Phone: _____

Please mail to:

New York City Industrial Development Agency
Attention: Compliance Department
110 William Street
New York, NY 10038

OR FAX YOUR RESPONSE TO: (212) 618-5738

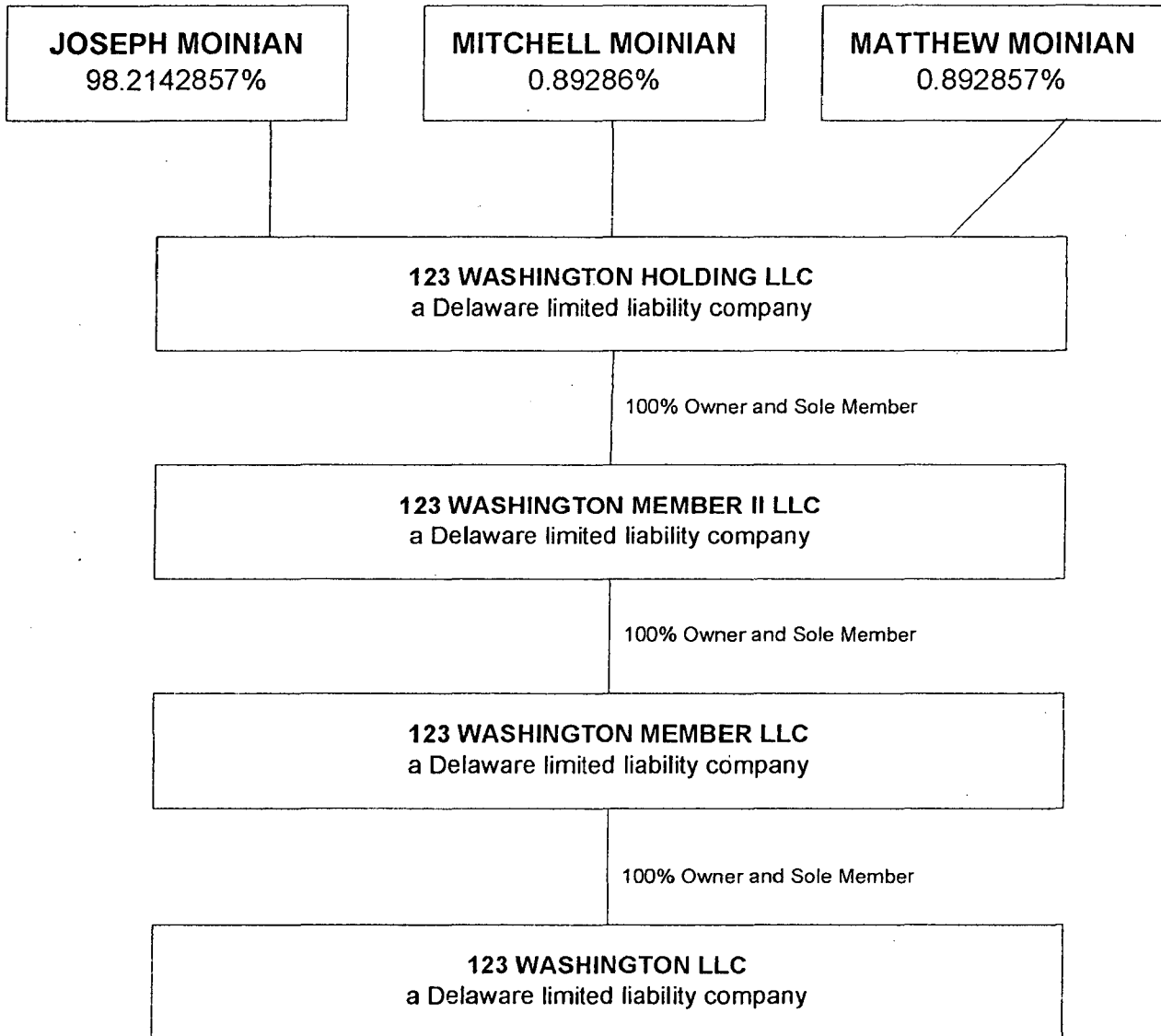
QUESTIONS? Please contact the Compliance Helpline at (212) 312-3963
or email ComplianceReporting@nycedc.com

SCHEDULE E

Exceptions, if any, to representation under Section 1.5(b)(b)

None

123 WASHINGTON STREET LLC COMPANY OWNERSHIP STRUCTURE



SCHEDULE F

FORM OF REQUIRED DISCLOSURE STATEMENT

The undersigned, an authorized representative of _____, a _____ organized and existing under the laws of the State of _____, DOES HEREBY CERTIFY, REPRESENT AND WARRANT to the New York City Industrial Development Agency (the "Agency") pursuant to [Section 6.1] [Section 9.3] of that certain Installment Sale Agreement and Assignment of Lease, dated as of October 1, 2007, between the Agency and 123 Washington LLC, a limited liability company organized and existing under the laws of the State of Delaware (the "Installment Sale Agreement") THAT:

[if being delivered pursuant to 6.1 of the Installment Sale Agreement] None of the surviving, resulting or transferee entity, any of the Principals of such entity, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with such entity:

[if being delivered pursuant to 9.3 of the Installment Sale Agreement] None of the assignee, transferee or sublessee entity, any of the Principals of such entity, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with such entity:

Except as set forth on Exhibit A attached hereto, all of which exceptions so set forth being subject to approval of the Agency within its sole and unlimited discretion:

(i) is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the City, unless such default or breach has been waived in writing by the Agency or the City, as the case may be;

(ii) has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;

(iii) has been convicted of a felony in the past ten (10) years;

(iv) has received a formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony offense; or

(v) has received a written notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in a court or other appropriate forum.

As used herein, the following capitalized terms shall have the respective meanings set forth below:

Control or Controls shall mean the power to direct the management and policies of a Person (x) through the ownership of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its Governing Body, or (z) by contract or otherwise.

Governing Body shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

Person shall mean any individual or entity, whether a trustee, corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority, governmental instrumentality or otherwise.

Principal(s) shall mean, with respect to any Person that is an entity, the chief executive officer, the chief financial officer and the chief operating officer of such Person, or any individual holding equivalent positions.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this ____ day of _____, 200_.

[NAME OF CERTIFYING ENTITY]

By: _____

Name:

Title:

Exhibit A

SCHEDULE G

Recognized Mezzanine Lenders

Credit Suisse (Holder of First Mezzanine Loan)
Column Financial, Inc.
11 Madison Avenue
New York, New York 10010
Attention: Edmund Taylor
Facsimile No.: (212) 352-8106

with a copy to:

Column Financial, Inc.
One Madison Avenue
New York, New York 10010
Legal and Compliance Department
Attention: Casey McCutcheon, Esq.
Facsimile No.: (917) 326-8433

with a copy to:

Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, New York 10281
Attention: John Zizzo, Esq.
Facsimile No.: (212) 504-6666

CBRE (Holder of Second Mezzanine Loan):

CBRE Realty Finance Holdings IV, LLC
185 Asylum Street
31st Floor
Hartford, CT 06103
Attention: Ann Marie O'Rourke

with a copy to:

WolfBlock
1650 Arch Street, 22nd Floor
Philadelphia, PA 19103
Attention: Helene S. Jaron, Esq.

SCHEDULE H

Recognized Mortgage Lenders

PB Capital Corporation
230 Park Avenue
New York, New York 10169
Attention: Real Estate Portfolio Management
Telephone No.: (212) 756-5557
Facsimile No.: (212) 756-5536

with a copy to:

Kaye Scholer LLP
425 Park Avenue
New York, New York 10022
Attention: Warren J. Bernstein, Esq.
Telephone No.: (212) 836-8073
Facsimile No.: (212) 836-6673